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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1087

THE HONORABLE RICHARD KELLY,
CIRCUIT JUDGE,
Petitioner,

vs.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondent.

APPENDIX "F" TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JOHN W. BOULT,
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FOWLER, WHITE, GILLEN, HUMKEY & KNOWLTON, P.A.
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Tampa, Florida 33601
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JONES PRINTING CO., INC., TAMPA, FLORIDA

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STATE OF FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION
SUPREME COURT BUILDING
TALLAHASSEE

32302

June 24, 1968

Honorable Richard A. Kelly
Pasco County Courthouse
Dade City, Florida

Judge Kelly:

Pursuant to the provisions of Section 17A, Article V, Constitution of the State of Florida, and the Rules of the Florida Judicial Qualifications Commission, as adopted by the Supreme Court of Florida, on March 6, 1968, you are hereby notified that the Florida Judicial Qualifications Commission, on its own motion, is conducting an investigation of your conduct in filing on April 5, 1968, in the office of the Clerk of the Circuit Court, Pinellas County, Florida, a certain petition, and thereby making the matters set forth therein public.

If the petition was filed by you for the purpose of publicly embarrassing other circuit judges in the Sixth Judicial Circuit without proper foundation or factual basis, your conduct in filing the same may have been conduct unbecoming a member of the judiciary.

The Commission will meet at 9:00 o'clock a.m., on Friday, July 12, 1968, at the Pasco County Courthouse, Dade City, Florida. Pursuant to Rule 8(b) of the Rules of the Florida Judicial Qualifications Commission, (207 So.2d 443), you may at said time and place make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting, or admitting your conduct as above set out.

Very truly yours,

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By /s/ John S. Rawls

John S. Rawls, Chairman

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 1.

IN THE NAME OF THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION:

TO: Honorable Richard A. Kelly
Circuit Judge
Sixth Judicial Circuit of Florida
Route 2, Box 225-A
Zephyrhills, Florida

Pursuant to the provisions of Article 5, Section 17a of the Constitution of the State of Florida and the Rules of the Florida Judicial Qualifications Commission, as adopted by the Supreme Court of Florida, you are hereby notified of the institution of formal proceedings to inquire into the following charges against you:

That you are guilty of conduct unbecoming a member of the Judiciary and that you have a disability seriously interfering with the performance of your duties as a Circuit Judge of the Sixth Judicial Circuit of Florida, which is, or is likely to become, permanent in nature, by:

I

Failing to cooperate with other Circuit Judges of the Sixth Judicial Circuit while presiding Judge of said Circuit during the months of February, March and April, 1968, contrary to Canon Eight of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

II

Attempting to seek alleged change in Court procedures, in a manner contrary to Canons Eight, Twenty and Twenty-three of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

III

Seeking publicity with the intent to embarrass the other judges of the Sixth Judicial Circuit by filing a petition with the Clerk of the Circuit Court of Pinellas County, Florida, on April 8, 1968, a copy of which is attached hereto as Exhibit A, without prior thereto affording the other judges of said circuit an opportunity to consider the contents of said petition, but by appraising members of the press of the contents of the petition prior to filing the same, contrary to Canons Eight and Twenty-one of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

IV

Seeking to embarrass the other judges of the Sixth Judicial Circuit by filing a petition with the Clerk of the Circuit Court of Pinellas County, Florida, on April 8, 1968, without prior thereto affording the other judges of said circuit an opportunity to consider the contents of said petition, but by appraising members of the press of the contents of the petition prior to filing the same, which petition contained inaccurate factual information contrary to Canons Eight and Twenty-one of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

V

Using the office of Circuit Judge of the Sixth Judicial Circuit for the purpose of advancing your personal ambitions and publicity to the detriment or embarrassment of your fellow Circuit Judges of the Sixth Judicial Circuit contrary to Canons Eight, Twenty-one, Twenty-three and Thirty-four of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

VI

Creating turmoil by criticizing the other judges and court personnel of the Sixth Judicial Circuit as well as the administration of the court, contrary to Canons

Four, Eight and Thirty-four of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

VII

Conduct leading to the disrespect for, and the lowering of, the image of the court.

VIII

Failing to be considerate of, and courteous to, counsel and others in attendance upon the court, contrary to Canons Nine and Ten of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

IX

Misleading the other judges of the Sixth Judicial Circuit regarding your willingness to resign as presiding judge in order to preclude your removal as presiding judge of the Sixth Judicial Circuit.

X

Embarrassing another judge of the Sixth Judicial Circuit by summoning a Grand Jury already charged by such judge and recharging them as to their duties.

You have the right to file a written answer to the charges against you within twenty days after service of this notice upon you.

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ William D. Hopkins

WILLIAM D. HOPKINS
Hopkins, Folsom & Steinmeyer
Lewis State Bank Building
Tallahassee, Florida

Counsel for the Florida Judicial
Qualifications Commission

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
INQUIRY CONCERNING A JUDGE, NO. 1.

MOTION TO DISMISS AND REQUEST FOR ORAL ARGUMENT

The respondent, RICHARD A. KELLY, by and through his undersigned attorneys, specially appears for this purpose only and moves the Commission for the entry of an order dismissing the charges filed herein against him, and each of them severally, or in the alternative, enter a formal finding that there is not probable cause to believe that he is guilty of any misconduct, on the ground that this Commission is without jurisdiction. In support thereof, Respondent states:

1. This Commission is without jurisdiction, in that in violation of Rules 25 and 29(c), FJQCR, the Commission failed to institute formal proceedings, or to enter a formal finding that there is not probable cause to believe that Respondent is guilty of any misconduct, within 60 days of the filing by this Respondent of a written demand in the manner specified in Sec. 29(C) FJQCR.

2. This Commission is without jurisdiction, in that in violation of Rules 25, 29(c) and 9(b), FJQCR, no charges of sufficient particularity specifying the facts relied upon in support thereof were timely filed, and in the alternative, this Commission is without jurisdiction to consider any particular charge that is inadequately pled in violation of said FJQCR.

3. This Commission is without jurisdiction in that the charge of disability and the charges contained in Sec. VI, VII, VIII, IX and X, were never presented to the Respondent during the course of the investigatory proceedings, thereby denying to Respondent the opportunity to respond thereto, in violation of Rule 8(b), FJQCR.

4. This Commission is without jurisdiction because the Commission is illegally constituted, in violation of Article V, Sec. 17A of the Florida Constitution, in that the Commission has failed to act upon or consider Respondent's affidavit pertaining to prejudice on the part of a member of this Commission as provided by Rule 5, FJQCR, and further, in the alternative, that Rule 5, FJQCR, provides for a replacement of disqualified members in a manner contrary to the provisions of the above noted constitutional provision.

5. This Commission is without jurisdiction over the Respondent herein, in that the Rules of the Florida Judicial Qualifications Commission violate the First, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and the Declaration of Rights of the State of Florida, in that by way of example and without limitation, said rules and conduct of the Commission violate the Respondent's constitutional right to freedom of speech and his constitutional protection against self-incrimination, and further violate the Respondent's constitutional right to a trial by a jury of his peers, drawn from a cross-section of the community, and further do not afford the Respondent procedural due process, in that these proceedings are penal in nature and the Rules do not provide an adequate degree of protection to the Respondent in connection with said proceedings, and further violate the Respondent's right to be afforded due process of law in that said Rules constitute this Commission investigator, prosecutor and judge of the charges herein.

WHEREFORE, Respondent prays that the charges filed herein against him be dismissed.

MASTERSON, LLOYD,
SUNDBERG & ROGERS,
447 3rd Avenue North,
St. Petersburg, Florida,
-and-
FOWLER, WHITE, COLLINS, GILLEN,
HUMKEY & TRENAM,
712 Florida Office Building,
St. Petersburg, Florida 33701,
By /s/
MICHAEL L. KINNEY.

REQUEST FOR ORAL ARGUMENT

The Respondent respectfully requests oral argument on the foregoing motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been sent by United States Mail to the Honorable William Hopkins, attorney for the Florida Judicial Qualifications Commission, and to each Member of the Commission, at his address of record, by Certified Mail, Return Receipt Requested, this 27 day of November, 1968.

/s/ Michael L. Kinney

Attorney.

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 1.

ORDER

Respondent's Motion to Dismiss and Request for Oral Argument, dated 27 November 1968, having been duly considered by the Commission and it appearing that the Rules of the Judicial Qualifications Commission promulgated by the Supreme Court of Florida on March 6, 1968, and reported in 207 So.2d 443, do not provide for the filing of such Motion, it is therefore

ORDERED that said Motion be and the same is hereby stricken ex mero motu.

DONE and ORDERED this 8th day of December, A. D. 1968, at Miami, Florida.

/s/ John S. Rawls
CHAIRMAN

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
INQUIRY CONCERNING A JUDGE, NO. 1.

ANSWER

The Honorable Richard A. Kelly, through his undersigned attorneys, without waiving any of his Constitutional rights either under the Federal Constitution or the Constitution of the State of Florida, and without waiving his challenge to the jurisdiction of this Commission as set forth in his motion to dismiss previously filed with this Commission, and without waiving his right to petition the Supreme Court for a hearing prior to any further action by this Commission, files this, his response and answer to the formal proceedings filed against him and states:

FIRST DEFENSE

He denies each and every allegation whether numbered or unnumbered of the formal proceedings.

SECOND DEFENSE

For a second defense, the Honorable Richard A. Kelly states that this Commission lacks jurisdiction over the subject matter of these proceedings in that it has violated Rules 25 and 29(c) FJQCR by failing to institute formal proceedings or to enter a formal finding that there is not probable cause to believe that Respondent is guilty of any misconduct within sixty (60) days of the filing by the Honorable Richard A. Kelly of a written demand in the manner specified in Sec. 29(c) FJQCR.

THIRD DEFENSE

This Commission is without jurisdiction, in that in violation of Rules 25, 29(c) and 9(b) FJQCR, no chargen of sufficient particularity specifying the facts relied upon in support thereof were timely filed, and in the alternative, this Commission is without jurisdiction to consider any particular charge that is inadequately pled in violation of said FJQCR.

FOURTH DEFENSE

This Commission is without jurisdiction in that the charge of disability and the charges contained in Sec. VI, VII, VIII, IX and X were never presented to the Respondent during the course of the investigatory proceedings, thereby denying to Respondent the opportunity to respond thereto, in violation of Rule 8(b) FJQCR.

FIFTH DEFENSE

This Commisamsion is illegally constituted, in violation of Article V, Sec. 17A of the Florida Constitution, in that the Commission has substituted one of its members to replace a disqualified member in a manner contrary to the provisions of the above noted constitutional provision.

SIXTH DEFENSE

This Commission is without jurisdiction over the Respondent herein, and this Commission as constituted and the proceedings herein and the rules under which said proceedings are conducted, together and severally, violate the First, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and the Declaration of Rights of the State of Florida, in that by way of example and without limitation, said rules and conduct of the Commission violate the Respondent's constitution right to freedom of speech and his constitutional protection against self-incrimination, and further violate the Respondent's constitutional right to a trial by a jury of his peers, drawn from a cross-section of the community, and further do not afford the Respondent procedural due process, in that these proceedings are penal in nature and the Rules do not provide an adequate degree of protection to the Respondent in connection with said proceedings, and further violate the Respondent's right to be afforded due process of law in that said Rules constitute this Commission investigator, prosecutor and judge of the charges herein.

WHEREFORE, Respondent prays that the charges filed herein against him be dismissed.

MASTERSON, LLOYD, SUNDBERG & ROGERS,
447 3rd Avenue North,
St. Petersburg, Florida,
—and—
FOWLER, WHITE, COLLINS, GILLEN, HUMKEY & TRENAM,
712 Florida Office Building,
St. Petersburg, Florida
By Michael L. Kinney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been sent by United States Mail to the Honorable William Hopkins, Attorney for the Florida Judicial Qualifications Commission, and to each Member of the Commission, at his address of record, by Certified Mail, Return Receipt Requested, this 27th day of December, 1968

/s/ MARVIN E. BARKIN,
Attorney

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 1.

RICHARD A. KELLY, CIRCUIT JUDGE

REPORT OF THE JUDICIAL QUALIFICATIONS COMMISSION

Comes now the Judicial Qualifications Commission[1] and files this, its Report to the Supreme Court of Florida regarding the Honorable Richard A. Kelly, Circuit Judge of the Sixth Judicial Circuit, together with its findings of fact, conclusions, and recommendations for disciplinary action in accordance with the rules of the Supreme Court of Florida, adopted pursuant to Section 17(a), Article V, Constitution of the State of Florida of 1885, as amended and reported in 207 So.2d 443.

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[1] The Florida Judicial Qualifications Commission consists of John S. Rawls, Judge of the First District Court of Appeal, Tallahassee; Thomas H. Barkdull, Jr., Judge of the Third District Court of Appeal, Miami; Woodrow M. Melvin, Judge of the First Judicial Circuit, Milton; James S. Moody, Judge of the Thirteenth Judicial Circuit, Plant City; General Paul D. Adams (Ret.), Tampa, Admiral Robert Goldthwaite (Ret.), Pensacola, and Gilmer A. MacDougald, Fort Lauderdale, appointed as lay members of the Commission; Charles A. Kimbrell, member of The Florida Bar, Miami. The foregoing members were selected for membership on the Commission pursuant to the provisions of § 43.20, Fla. Stat. (1967). The Florida Bar selected Richard T. Earle, Jr., of St. Petersburg, as one of the regular members of the Commission. Prior to the filing of formal charges in this matter, Richard T. Earle, Jr., disqualified himself from further proceedings and, pursuant to 5(a) FJQCR, the Commission appointed Mark Hulsey, Jr., of Jacksonville, member of The Florida Bar, to replace Richard T. Earle, Jr., which appointment was approved by the Executive Committee of the Board of Governors of The Florida Bar, pursuant to the Integration Rule of The Florida Bar.

BACKGROUND

In the spring of 1968, it came to the attention of the Commission that the Honorable Richard A. Kelly, Circuit Judge of the Sixth Judicial Circuit, had filed a petition in the Public Records of Pinellas County, Florida, within the Sixth Judicial Circuit, which was receiving a great deal of notoriety. Upon preliminary investigation, it appeared that the petition was filed by Judge Richard A. Kelly not for the purpose of improving the administration of justice in the Sixth Judicial Circuit but was filed apparently in retaliation for being recalled or removed as Presiding Judge by the other judges of the circuit.

Thereafter, the Commission on its own motion made an informal inquiry into the matter and twice proceeded to Dade City, Florida, the County Seat of Pasco County, wherein Judge Kelly resided, in an attempt to resolve this matter. These journeys to Dade City were futile, as Judge Kelly and his lawyers declined to communicate or explain his actions in filing the petition to the Commission. The last of these journeys was made in August of 1968, at which time the Commission was met with a motion filed by Judge Kelly, pursuant to 29(c) FJQCR, requiring the Commission to either institute formal charges within sixty (60) days or make a finding of no probable cause and file same with the Supreme Court of Florida as a matter of public record. Thereafter, formal charges were filed against Judge Kelly, pursuant to 9 FJQCR. Judge Kelly ultimately met the charges by an answer containing certain defenses, and demanded a public hearing pursuant to 29(d) FJQCR. The matter was set for hearing on January 29, 1969, in the County Courthouse, Dade City, Pasco County, Florida.

After several days of testimony, much of which related to an alleged mental disability from which Judge Kelly may have been suffering, the Commission recessed the hearings until March 10, 1969, and directed that an amendment to the formal charges be filed pursuant to 15 FJQCR, setting up the alleged mental disa-

bility. The Commission further directed, pursuant to 12(b) FJQCR, that Judge Kelly submit to a psychiatric examination.[2] Formal charges, as amended, were filed in words and figures in part as follows:

• • •

"Pursuant to the provisions of Article 5, Section 17a of the Constitution of the State of Florida and the Rules of the Florida Qualifications Commission, as adopted by the Supreme Court of Florida, you are hereby notified of the institution of formal proceedings to inquire into the following charges against you:

"That you are guilty of conduct unbecoming a member of the Judiciary and that you have a mental or emotional disability seriously interfering with the performance of your duties as a Circuit Judge of the Sixth Judicial Circuit of Florida, which is, or is likely to become, permanent in nature, by:

"I

"Failing to cooperate with other Circuit Judges of the Sixth Judicial Circuit while Presiding Judge of said Circuit during the months of February, March and April, 1968, contrary to Canon Eight[3] of the

---

[2] Although there was no proceeding for the Circuit Judge to demand that a psychiatric examination be held, he did in fact demand and move for such an examination before the Commission.

[3] The following Canons of Judicial Ethics are referred to in the formal charges, as amended:

"8. Court Organization.

"A judge should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good natured acquiesence by reason of friendly association with him.

"It is desirable too, where the judicial system permits *that he should cooperate with other judges of the same court*, and in other courts, *as members of a single judicial system, to promote the more satisfactory administration of justice.*"

Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

"20. Influence of Decisions upon the Development of the Law.

"*A judge should be mindful that his duty is* the application of general law to particular instances, *that ours is a government of law and not of men*, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. *He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge and r the sanction of law.*"

"21. Idiosyncrasies and Inconsistences.

"Justice should not be moulded by the individual idiosyncrasies of those who administer it. *A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgment, or spectacular or sensational in the conduct of the court.* Though vested with discretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

"In imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency."

"23. Legislation.

"*A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice;* and to ascertain whether they tend to impede the unjust disposition of controversies; *and he may well contribute to the public interest by advising those having authority to remedy defects of procedure*, of the result of his observation and experience."

"34. A summary of Judicial Obligation.

"In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, *nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.*" (emphases added)

"II

"Attempting to seek alleged change in Court procedures, in a manner contrary to Canons Eight, Twenty and Twenty-three[3] of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

"III

"Seeking publicity with the intent to embarrass the other judges of the Sixth Judicial Circuit by filing a petition with the Clerk of the Circuit Court of Pinellas County, Florida, on April 8, 1968, a copy of which is attached hereto as Exhibit A, without prior thereto affording the other judges of said circuit an opportunity to consider the contents of said petition, but by appraising members of the press of the contents of the petition prior to filing the same, contrary to Canons Eight and Twenty-one[3] of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

* * *

"V

"Using the office of Circuit Judge of the Sixth Judicial Circuit for the purpose of advancing your personal ambitions and publicity to the detriment or embarrassment of your fellow Circuit Judges of the Sixth Judicial Circuit contrary to Canons Eight, Twenty-one, Twenty-three and Thirty-four[3] of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

* * *

"VII

"Conduct leading to the disrespect for, and the lowering of, the image of the court.

* * *

"X

"Embarrassing another Judge of the Sixth Judicial Circuit by summoning a Grand Jury already charged by such judge and recharging them as to their duties."

• • •

These were met by an answer denying each and every allegation of the formal charges, as amended, raising the defense of lack of jurisdiction over the subject matter; alleging that the Commission failed to abide by the rules adopted by the Supreme Court of Florida; that the Commission was illegally constituted; and that the proceedings violated certain constitutional rights of the respondent, Judge Kelly, accorded him under the Declaration of Rights of the Constitution of the State of Florida and the Bill of Rights of the Constitution of the United States.

Notwithstanding the order of the Commission to submit to a psychiatric examination and notwithstanding the demand and agreement by Judge Kelly for such an examination, he did, on March 5, 1969, decline to submit to an examination by the Commission-appointed psychiatrist.[4]

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[4] At the time of the resumed hearing, Judge Kelly attempted to offer evidence of medical doctors as to his mental condition, but this evidence was rejected because of his failure to submit to psychiatric examination ordered by the Commission. It was recognized that he had the right to decline, pursuant to 12(b) FJQCR, and this fact could be taken into consideration in the Commission's deliberations. The effect of his failure to submit to an examination and the Commission's ruling that he could not offer expert medical testimony on this subject was to limit the record to lay testimony as to his mental condition, in accordance with general Florida authorities. See: 13 Fla. Jur., Evidence, § 329; Redfearn, Wills and Administration in Florida, 4th Ed. Vol. 1, § 4.18, p. 78, and § 10.23, p. 206; Armstrong v. State, 30 Fla. 170, 11 So. 618; Norman v. State, Fla. App. 1963, 156 So.2d 186; Byrd v. State, Fla. App. 1965, 178 So.2d 886; Brady v. State, Fla. App. 1966, 190 So.2d 607; 72 A. L. R., p. 579; 40 A. L. R. 2d, p. 22.

The Commission resumed its hearings on March 10, 1969. Judge Kelly took the stand in his own defense. The proceedings terminated on March 13, 1969. The Commission heard from ninety-seven witnesses and received a number of exhibits. The transcript of testimony was completed and delivered to the Commission on Monday, April 21, 1969, and consisted of 1456 pages. It has now been reviewed by the members of the Commission and, together with the exhibits and the Commission's file on this matter, it is herewith filed as an addendum to this Report.

FINDINGS OF FACT AND CONCLUSIONS

As indicated above, Judge Kelly was charged with "conduct unbecoming a member of the judiciary" and that he was "suffering from a mental or emotional disability seriously interfering with his performance as a circuit judge". It is unfortunate, both for him and the people of the State of Florida, that Judge Kelly was unwilling to submit to an examination by qualified psychiatrists,[5] in order that the Commission could have finally put at rest this vexatious charge. However, there is not sufficient evidence in this record to support a finding that Judge Kelly has a mental or emotional disability that seriously interferes with his conduct as a circuit judge.

As to the charge of "conduct unbecoming a member of the judiciary", the Commission finds sufficient evidence to support the specific allegations contained in Paragraphs I, II, III, V, and VII of the formal charges, and finds insufficient evidence to support the charges contained in the other numbered paragraphs of the specific allegations, except as to Paragraph X. As to the specific charge of conduct unbecoming a member of the judiciary, relating to the re-charging of a Grand Jury under the supervision of another Circuit Judge, we find

---

[5] No attack was made on the competency of the medical experts appointed by the Commission and, in fact, they were both Board Certified Psychiatrists in accordance with the rules and regulations of the American Medical Association.

the evidence more than sufficient to support this charge. But, this event occurred prior to the adoption of the Amendment to the Constitution which created the Judicial Qualifications Commission and, therefore, the Commission finds it is without jurisdiction of this charge. No further reference will be made to the specific allegations wherein a finding of insufficient evidence to support the charges has been noted or wherein the Commission finds it is without jurisdiction.

As to those specifics wherein we find the evidence is sufficient to support the charges as numbered above (except X), the evidence adduced before the Commission reveals the following: That on February 13, 1968, the Judges of the Sixth Judicial Circuit elected Richard A. Kelly as Presiding Circuit Judge, pursuant to Rule 1.020, Florida Rules of Civil Procedure. He immediately engaged in a course of conduct calculated to disrupt the activities of the Circuit by proceeding to propose changes in the method by which criminal prosecutions were handled in the Circuit; by averring that certain Judges of the Circuit were not working, particularly those in the south end of the County (Pinellas); by ordering one of the Judges to duty in Pasco County for ninety days, even though said Judge resided in St. Petersburg, Pinellas County; by indicating that he was going to transfer all domestic relations cases to one particular Judge of the Circuit; proposed eliminating Special Masters in uncontested divorce cases; and ordered the official court reporter to report all justice of the peace hearings upon call of the Public Defender of Pinellas County; and generally created turmoil, confusion, and chaos within the Circuit. As a result, a majority of the other Judges of the Circuit determined to remove or recall him as Presiding Judge in March of 1968. He was notified of this sentiment and determination of a majority of his fellow Judges on March 19, 1968.

Judge Kelly first requested the Judges to refrain from removing or recalling him, assuring them that if

they would leave him with the title of Presiding Judge he would return to Pasco County[6] and not interfere with the running of the Circuit Court at Pinellas County nor propose any court reforms. When this offer was unacceptable, he requested and was granted a week's reprieve in order that he might tender a resignation as Presiding Judge. It was thought he might be a candidate for another judicial office, and this would give him an excuse to resign. When the week was up, a majority of the Circuit Judges again met with Judge Kelly to consider his recall as Presiding Judge, at which time he polled each member there present; determined that they were still for removing him as Presiding Judge. Thereupon he announced his resignation, and threatened those in attendance that they would regret their actions; that he would cause them embarrassment and get back at them. He then left the meeting. Some several days later, he arranged an appointment with the editor and certain personnel of a local newspaper in St. Petersburg, to enlighten them about a petition proposing certain alleged judicial reforms he intended to file. Subsequently, on April 5, 1968, he filed what was styled "Petition to the Judges of the Sixth Judicial Circuit in the Circuit Court of Pinellas County", containing alleged court reforms and criticism of court administration, prior to having afforded his fellow Judges an opportunity to see or examine the contents thereof.[7] The filing of said

---

[6] Judge Kelly originally ran for the position of Judge of the Sixth Judicial Circuit as the resident Judge in Pasco County, pursuant to the provisions of § 26.071, Fla. Stat. At the time of the election and at all times since then he has been a resident of Pasco County, and has admitted in his testimony that the volume of work in Pasco County is now sufficient to require the full time attention of one Circuit Judge. The Sixth Judicial Circuit has, at this time, twelve judges to tend to the duties within the Circuit, which consists of Pinellas and Pasco Counties. The bulk of the work within the Circuit is generated within Pinellas County.

[7] This petition, together with its exhibits, consisting of 57 pages, was attached to the formal charges as amended, as Exhibit A, and was introduced into evidence as a Commission exhibit.

petition without prior thereto exhibiting it or calling it to the attention of his fellow Judges evidenced a lack of cooperation, disrespect of his obligation as a member of the judiciary, was calculated to embarrass his fellow Judges, brought disrespect upon the jundiciary, and was an attempt to seek court reform not in the usual or normal manner. Further, the petition was filed for the purpose not of improving the administration of justice in the Sixth Judicial Circuit but was filed not only to spite his fellow Judges but for the purpose of advancing his own personal ambition and publicity, to the detriment and embarrassment of the remaing members of the Circuit bench.

If Judge Kelly had been solely interested in the internal court reform of the Sixth Judicial Circuit, he of all judges was well aware of the appropriate procedure to follow in obtaining the rules he desired. In the early 1960's a majority of the Judges of the Sixth Judicial Circuit proposed certain local rules for approval to the Supreme Court of Florida, Judge Kelly did not agree with the rules as proposed by the majority of the Judges of the Circuit. He filed a petition to this effect before the Supreme Court which petition, in part, was granted and certain of the rules advocated by him were ultimately adopted by the Supreme Court.[8]

The publicity incidental to the filing of this petition did bring the Sixth Judicial Circuit into disrepute and, as testified to, it was known as the "sick" Circuit. Certainly the public has a right to know of the affairs of its judicial system and our finding is not a criticism of the public's right to know of the court's operation. Our finding is that Judge Kelly failed to follow recognized

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[8] Subsequent to the filing of the petition in April of 1968, the remaining Judges of the Sixth Judicial Circuit considered the proposed rule changes recommended by Judge Kelly, finding some merit in certain of them. They have now proposed new local rules to the Supreme Court of Florida, and Judge Kelly will once again have an opportunity to present his views if they differ from the majority.

methods of proposing changes in judicial procedure, that he did not afford them an opportunity to be aware of his charges and the contents of the petition or give them an opportunity for consideration thereof prior to filing. Rather, he was more interested in creating controversy and in publicity for himself than in accomplishing court reform.[9]

It is our conclusion that said conduct and activities violated Canons 8, 20, 21, 23, and 34 of the Canons of Judicial Ethics as adopted by the Supreme Court of Florida.

RECOMMENDATIONS

Therefore, having found and concluded that said Richard A. Kelly, Circuit Judge of the Sixth Judicial Circuit, has engaged in conduct unbecoming a member of the judiciary, it is the recommendation of the Commission that the said Richard A. Kelly be called before the Supreme Court of Florida at a time certain to be publicly reprimanded for said conduct and admonished to comply with his oath as a member of the Judiciary, and to abide by the Canons of Judicial Ethics as a member of the Judiciary, particularly in:

(a) Cooperating with his fellow Judges;

(b) Following the normal method for seeking procedural changes as to the administration of justice in the Sixth Judicial Circuit;

(c) Refraining from seeking personal publicity or attempting to advance his personal ambitions through the public information media; and

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[9] It is not the function of the Commission to determine the merit or wisdom of the proposed reforms as set up by Judge Kelly. The proper forum for this determination is ultimately before the Supreme Court of Florida. This Commission's Report is not intended to reflect on the wisdom or lack of wisdom of any of the proposed procedural changes recommended in the petition.

(d) In accordance with his admission that there is sufficient work in Pasco County to keep him occupied on a full time basis, that he discharge the duties of a resident Circuit Judge of Pasco County in and for the Sixth Judicial Circuit, and refrain from service in Pinellas County of the Sixth Judicial Circuit, unless assigned by the Presiding Judge of said Circuit to duty in Pinellas County pursuant to Rule 1.020(c) (4), Florida Rules of Civil Procedure.

It is further the recommendation of the Commission that the ultimate action by the Supreme Court in these proceedings shall be without prejudice to the entire record of this inquiry being introduced into evidence in any subsequent inquiry which may be brought before the Judicial Qualifications Commission concerning Judge Richard A. Kelly.

Respectfully submitted,

FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION
/s/ JOHN S. RAWLS, Chairman
/s/ PAUL D. ADAMS
/s/ THOMAS H. BARKDULL, JR.
/s/ ROBERT GOLDTHWAITE
/s/ MARK HULSEY, JR.
/s/ CHARLES A. KIMBRELL
/s/ GILMER A. MACDOUGALD
/s/ WOODROW M. MELVIN
/s/ JAMES S. MOODY

I, JOHN S. RAWLS, Chairman of the Judicial Qualifications Commission of Florida, hereby certify as follows:

1. That the above and foregoing Report reflects the unanimous action of the entire Membership of the Judicial Qualifications Commission in connection with this Inquiry, and that same is filed in accordance with the requirements of 23 FJQCR.

2. That I have this 7th day of May, 1969, furnished a copy of the above and foregoing report to Counsel for the Commission, William D. Hopkins of Hopkins, Folsom and Steinmeyer, Lewis State Bank Building, Tallahassee, Florida; to Judge Richard A. Kelly, Route 2, Box 225-A, Zephyrhills, Florida; and to Counsel for Judge Richard A. Kelly, Michael L. Kinney of Fowler, White, Collins, Gillen, Humkey and Trenam, 712 Florida Office Building, St. Petersburg, Florida, and Masterson, Lloyd, Sundberg & Rogers, 447 Third Avenue North, St. Petersburg, Florida.

/s/ JOHN S. RAWLS

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE :

NO. 1 :

PETITION TO THE SUPREME COURT

Petitioner, JUDGE RICHARD KELLY, pursuant to the provisions of Rule 24(a), Florida Judicial Qualifications Commissions Rules, files this his verified petition to the Supreme Court to reject the recommendations, findings and conclusions of the Florida Judicial Qualifications Commission in the particulars and upon the grounds enumerated herein.

Hereinafter the Florida Judicial Qualifications Commission will be referred to as "the Commission". References to the record herein will be by the letter "R", referencing thereby a COPY OF RECORD OF PROCEEDINGS BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION served upon petitioner's counsel on May 7, 1969. References to the transcript of proceedings before the Commission will be by the letter "T" and date of the proceeding.

Petitioner was advised on June 26, 1968, that the Commission, upon its own motion, was investigating his conduct (R-2, 3 and 4). The Commission met on July 11, 1968, in St. Petersburg, at which time testimony was taken from judges of the Sixth Judicial Circuit. Petitioner, at that time, personally made a sworn statement to the Commission (T-July 11, 1968, page 222).

Thereafter, petitioner made a written demand in accordance with Rule 29(c) F.J.Q.C.R., that the Commission either institute formal proceedings against him or enter a formal finding that there was no probable cause to believe that petitioner was guilty of any misconduct. This demand was filed on August 19, 1968 (R-5).

The Commission, on November 8, 1968, nineteen (19) days beyond the time prescribed by Rule 29(c), F.J.Q.C.R., served petitioner with a notice of formal proceedings containing ten (10) charges of misconduct against petitioner (R-8 through 19). Petitioner was charged, in summary, with (1) failing to cooperate with other judges in his circuit, contrary to Canon 8 of the Canons of Judicial Ethics; (2) attempting to seek reforms in a manner contrary to Canons 8, 20 and 23; (3) seeking publicity in order to embarrass other judges in the circuit by filing a petition for court reform after conferring with the press about the petition without giving the other judges the opportunity to consider the contents thereof, contrary to Canons 8 and 21; (4) by filing the petition referenced in (3) above when the petition contained inaccurate statements; (5) using his position as a Circuit Judge to advance his personal ambitions, contrary to Canons 8, 21, 23 and 24; (6) creating turmoil by criticising other judges and court personnel; (7) conduct leading to disrespect for, and the lowering of, the image of the court; (8) failing to be considerate of counsel and others in court, contrary to Canons 9 and 10; (9) misleading other judges regarding his willingness to resign as presiding judge; (10) embarrassing another judge by recharging a Grand Jury. Two additional charges were added by amendment during the trial (after which amendment, a recess from January 29, 1969 to March 10, 1969 was taken). The amendment (R-58, 59) charged petitioner with having a mental or emotional disability seriously interfering with the performance of his judicial duties in that, (11) his conduct was irrational and (12) he constantly created turmoil and confusion.

In response to the charges, the petitioner filed a motion to dismiss, contending therein that the Commission was without jurisdiction to pursue the subject matter of the charges any further against him (R-25 and 26), because of the Commission's failure to institute formal proceedings or to enter a formal finding that

there was not probable cause to believe that petitioner had been guilty of any misconduct within the sixty (60) days provided by Section 29(c), F.J.Q.C.R. Petitioner also contended at that time that the Commission was without jurisdiction to proceed against him in that the Commission had failed to file charges with the particularity specified by Rules 25, 29(c) and 9(d), F.J.Q.C.R. It was also contended by petitioner that the charges set forth in Section VI, VII, VIII, IX and X had not been presented to him during the investigation by the Commission, thereby denying petitioner the opportunity to respond to those charges, a right which was preserved to him by Rule 8(b), F.J.Q.C.R.

In this same motion to dismiss, petitioner further contended that the Commission was illegally constituted and that the manner in which the Commission was proceeding against him constituted a denial of rights assured petitioner by the First, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and the Declaration of Rights of the State of Florida, Section 2, 12 and 13.

The aforesaid motion, filed by petitioner, was stricken, ex mero motu, by the Commission on December 8, 1968, upon the ground that the rules of the Commission did not provide for any such motion (R-28)

Following disposition of the aforesaid motion, petitioner filed his answer and defenses (R-30, 31 and 32). Petitioner denied the charges against him and again asserted that the Commission was without jurisdiction to proceed in the matter, raising therein the matters urged in the motion to dismiss. Following the answer, petitioner moved for an order requiring the Commissioner to amend the charges to achieve compliance with Rule 9(b), F.J.Q.C.R., or, in the alternative, for a full bill of particulars advising petitioner of the nature of the charges filed against him (R-34). This motion was denied (R-37). Petitioner then filed interrogatories and a motion to shorten the time within which the interrogatories should be answered (R-40 through 49 and R-38). The motion to shorten time was denied (R-51).

Petitioner thereafter sought relief in the form of a suggestion for a writ of prohibition or certiorari, in the alternative, from the Florida Supreme Court. Petitioner's application therefor was denied by this Court on January 20, 1969.

Hearings on the charges against petitioner commenced on January 29, 1969, in the County Court House in Dade City, Pasco County. These hearings were recessed following testimony for several days to March 10, 1969. Hearings were resumed on March 10, 1969, and and were concluded on March 13, 1969.

The Commission's report containing findings of fact, conclusions and recommendations was filed with the Florida Supreme Court on May 7, 1969 (R-101 through 117). This petition was thereafter timely filed.

In the recommendations of the Commission and findings of fact, the Commission found petitioner guilty of conduct unbecoming a member of the judiciary on charges I, II, III, V and VII, which were (I) failing to cooperate with other judges in the circuit, contrary to Canon 8 of the Canons of Judicial Ethics; (II) attempting to seek court changes in a manner contrary to Canons 8, 20 and 23; (III) seeking publicity in order to embarrass the other judges in the circuit by filing a petition for court reform after talking with the press but before giving the other judges the opportunity to consider the contents thereof, contrary to Canons 8 and 21; (V) using the office of circuit judge to advance his personal ambitions contrary to Canons 8, 21, 23 and 24; and (VII) conduct leading to disrespect for, and the lowering of, the image of the Court (R-110).

Petitioner was acquitted on the balance of the charges, including charge X relating to recharging of the Grand Jury. In respect to charge X, the Commission found that it was without jurisdiction because that conduct had occurred prior to the adoption of the constitutional amendment creating the Commission.

The Commission recommended discipline in the form of a public reprimand without prejudice to reconsideration of the entire matter in some subsequent inquiry.

Petitioner herein petitions this Court to (1) reject the recommendations of the Commission; (2) reject the findings of sufficient evidence to sustain charges I, II, III, V and VII; and (3) reject the references in the Commission's report to the alleged emotional or mental disability of petitioner beyond a simple finding of acquittal thereon, all for the reasons enumerated herein and in the brief to follow this petition.

DISCUSSION

1. The recommendations of the Commission and the findings upon which said recommendations purport to be based are not supported by competent evidence and the following findings should be rejected:

A. That petitioner, upon being elected presiding circuit judge on February 13, 1968, engaged in a course of conduct calculated to disrupt the activities of the circuit by proceeding:

(1) To propose changes in the method by which criminal prosecutions were handled in the circuit.

(2) By averring that certain judges of the circuit were not working, particularly those in the South end of the County (Pinellas).

(3) By ordering one of the judges to duty in Pasco County for ninety days, even though said judge resided in St. Petersburg, Pinellas County.

(4) By indicating that he was going to transfer all domestic relations cases to one particular judge of the circuit.

(5) Proposed eliminating special masters in uncontested divorce cases.

(6) Ordered the Official Court Reporter to report all justice of the peace hearings upon call of the Public Defender of Pinellas County.

(7) Generally created turmoil, confusion and chaos within the circuit (R-111).

B. That upon hearing of the desire of a majority of the judges in the circuit to request that he resign as presiding judge, petitioner first requested the judges to refrain from removing or recalling him, assuring them that if they would leave him with the title of presiding judge, he would return to Pasco County and not interfere with the running of the Circuit Court at Pinellas County nor propose any court reforms (R-112).

C. That petitioner, upon announcing his resignation as presiding judge, threatened those in attendance that they would regret their actions; that he would cause them embarrassment and get back at them (R-112).

D. That petitioner did not afford his fellow judges an opportunity to see or examine the petition which was filed on April 5, 1968 (R-112; R-113).

E. That the filing of said petition without prior thereto exhibiting it or calling it to the attention of his fellow judges evidenced a lack of cooperation, disrespect of his obligation as a member of the judiciary, was calculated to embarrass his fellow judges, brought disrespect upon the judiciary and was an attempt to seek court reform, not in the usual nor normal manner (R-113).

F. That the petition was filed for the purpose not of improving the administration of justice in the Sixth Judicial Circuit, but was filed not only to spite his fellow judges but for the purpose of advancing his own personal ambition and publicity, to the detriment and embarrassment of the remaining members of the circuit bench (R-113).

G. That the publicity incidental to the filing of this petition brought the Sixth Judicial Circuit into disrepute and the circuit was known as the "Sick" Circuit (R-114).

H. That petitioner failed to follow recognized methods of proposing changes in judicial procedure; that he failed to cooperate with his fellow judges in that he did not afford them an opportunity to be aware of his charges and the contents of the petition or give them the opportunity for consideration thereto prior to filing (R-114).

I. That petitioner was more interested in creating controversy and publicity for himself than in accomplishing court reform.

J. That petitioner violated Canons 8, 20, 21, 23 and 24 of the Canons of Judicial Ethics as adopted by the Supreme Court of Florida (R-114).

2. Petitioner has been denied due process of law guaranteed him by the Constitution of the United States and the State of Florida in the proceedings below in that the Commission failed to follow the rules of procedure promulgated by the Florida Supreme Court to the prejudice of petitioner in that:

A. In violation of Rules 25 and 29(c), F.J.Q.C.R., the Commission failed, within Sixty (60) days of the filing by petitioner of a written demand in the manner specified by Section 29(c),

F.J.Q.C.R., to institute formal proceedings or to enter a formal finding that there was not probable cause to believe that petitioner was guilty of any misconduct. As a result thereof, the Commission was without jurisdiction, upon the expiration of said sixty-day period, to proceed further against petitioner.

B. In violation of Rules 25, 29(c) and 9(b), F.J.Q.C.R., no charges of sufficient particularity specifying the facts relied upon in support thereof were timely filed or adequately pled in the proceeding below. As a result thereof, the Commission was without jurisdiction to proceed against respondent.

C. The Commission was without jurisdiction to proceed against petitioner in regard to the subject matter of Section VII in the charges filed against petitioner in that said charges were never presented to petitioner during the course of the investigatory proceedings, thereby denying to petitioner the opportunity to respond thereto, in violation of Rule 8(b), F.J.Q.C.R.

D. The procedure by which petitioner was investigated, tried and adjudged by the Commission violated the First, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of Florida, Declaration of Rights, Sections 2, 12 and 13 thereof.

E. The Commission was without jurisdiction to proceed against petitioner in that the Commission was illegally constituted in violation of Article V, Section 17A of the Florida Constitution.

3. Respondent has been denied due process of law guaranteed him by the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Florida, Declaration of Rights, Sections 2, 12 and 13 thereof, in that:

A. The Commission was apprised of all facets and features of the investigation of petitioner prior to the hearing upon the merits of the charges against petitioner.

B. The Commission itself filed the accusation against petitioner.

C. The Commission was the prosecutor of the charges against petitioner.

D. The Commission was the adjudicator of all questions of evidence, fact and law at the hearing on the merits of the charges against petitioner.

4. Petitioner was denied due process of law guaranteed him by the Constitution of the United States and the Constitution of the State of Florida, Declaration of Rights, Sections 2, 12 and 13 thereof, in that:

A. Notwithstanding the express finding of the Commission that insufficient evidence existed to support the charge that petitioner had a mental or emotional disability seriously interfering with the performance of his duties as a circuit judge of the Sixth Judicial Circuit of Florida, which was or was likely to become permanent in nature, the Commission stated or implied (R-110) that this "vexatious" charge had not been put to rest by the hearing below.

B. Petitioner was unlawfully denied the right to present evidence of the examinations of petitioner by qualified psychiatrists (R-97, 98).

5. Petitioner was denied due process of law guaranteed him by the Constitution of the United States and the Constitution of the State of Florida, Declaration of Rights, Sections 2, 12 and 13, in that petitioner was deprived of a fair trial because the Commission considered conduct and events which transpired and occurred,

A. prior to the impeachment trial of petitioner;

B. prior to the adoption by the people of the State of Florida of Article V, Section 17A of the Florida Constitution;

C. prior to the general election of November of 1968, at which time petitioner was reelected to the office of judge of the Sixth Judicial Circuit.

6. Petitioner was denied due process of law guaranteed him by the Constitution of the United States and the Constitution of the State of Florida, Declaration of Rights, Sections 2, 12 and 13 thereof, in that petitioner was deprived of a fair trial by virtue of the cumulative effect of the errors committed by the Commission below.

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and
FOWLER, WHITE, COLLINS, GILLEN, HUMKEY & TRENAM
Post Office Box 1438
Tampa, Florida 33601

Attorneys for Petitioner

By /s/ MICHAEL L. KINNEY

VERIFICATION

STATE OF FLORIDA)
) ss.
COUNTY OF HILLSBOROUGH)

RICHARD KELLY deposes and says that the facts and matters in the foregoing petition are true.

/s/ RICHARD KELLY

Sworn to and subscribed before me this 4th day of June, 1969.

Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition to the Supreme Court has been furnished, by mail, to John S. Rawls, Chairman of the Florida Judicial Qualifications Commission, Supreme Court Building, Tallahassee, Florida, and to William D. Hopkins, counsel for the Florida Judicial Qualifications Commission, Leon County Courthouse, Tallahassee, Florida, this _____ day of June, 1969.

Attorney

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D., 1970

INQUIRY CONCERNING A JUDGE NO. 1

Richard A. Kelly, Circuit Judge

Case No: 38,595

PETITION FOR REHEARING

Comes now the Petitioner, pursuant to Rule 3.14, Florida Appellate Rules, and files this his Petition for Rehearing addressed to this Court's majority opinion in this cause filed June 17, 1970.

In keeping with the terms of Rule 3.14, the purpose of this Petition is to set forth those items of apparent oversight and omission which we respectfully submit are reflected in the majority opinion to which this Petition is directed. A conscientious effort is made herein to avoid reargument of those matters previously argued in briefs filed on behalf of Petitioner in this cause. The causes and grounds upon which this Petition is based are set forth in separately numbered paragraphs below:

1. This Court stated in its majority opinion (Slip Opinion, page 5) as follows:

> "The evidence is replete with instances in which the judicial temperament of petitioner was lacking. Nineteen of the approximately twenty-one lawyers of Pasco County were willing to, and did, sign a petition for the impeachment of Judge Kelly; seven lawyers left Dade City in Pasco County because of Judge Kelly; many cases ordinarily filed in Pasco County were filed out of the county because of Judge Kelly; attorneys and court personnel were fearful of Judge Kelly; he was rude and

inconsiderate of attorneys and court personnel. His erratic behavior culminated in the filing of the petition."

We respectfully submit that this portion of the Court's opinion may have resulted from the Court's oversight in two respects, each of profound importance.

(a) First, the record of the proceedings before the Commission in this cause reveals clearly that conduct and events occurring prior to the Petitioner's re-election to office were *not* to be considered by the Commission except as they might relate to the Petitioner's present mental competency. Early in the proceedings this was made clear by the Commission (TR. 504-507):

> MR. MASTERSON: May I go to the second point, sir? At the last meeting of the Commission I started to make an argument directed to whether or not the Commission could consider matters which had arisen prior to the formation of the Commission. The creation of the Commission. And the members of the Commission agreed with me, and it was unnecessary for me to argue that point. However, I don't believe anything is in the record at this point which discloses that.
>
> I respectfully request the Commission to make that clear in the record. That the only time that the Commission will go behind an event which occurred prior to the formation of the Commission will be for the purpose of determining the mental competency of the Respondent, Judge Kelly.
>
> CHAIRMAN: I believe you misconstrued or maybe misinterpreted the feeling of the Commission. It seems like the consensus of the Commission at its last meeting that the action was not tied, although dates are identical, that they are tied as to the formation of the Commission, but were tied to the re-election of Judge Kelly as far as specific acts.

That any matters and things pertaining to his mental condition, or which would bear upon his mental condition, occurring prior to his last election would be considered by the Commission, and that any evidence tending to bear upon that question would be received. But as far as specific acts of misconduct in office, assuming that he is sui juris, that those acts that were committed prior to his last election would not be considered by the Commission.

It will be the responsibility of the Commission to weed out this testimony, either on admissibility or upon final consideration of the matter.

If any member of the Commission feels that I haven't stated the consensus of the Commission I wish they would make their desires known.

JUDGE BARKDULL: I think I am the one that raised the question before. It is my reply in the colloquy we had that it is not my understanding that this Commission sought to discipline Judge Kelly for any misconduct or alleged misconduct that may have occurred prior to his present term of office, but they would make an inquiry as to whether witnesses had an opportunity to observe and see and be familiar with Judge Kelly prior to that time in order to base an opinion as to his competency.

That it was not the purpose of this Commission to discipline Judge Kelly for anything that might have occurred incident, or facts that might have occurred prior to his present term of office.

MR. MASTERSON: I wanted to get that in the record."

This matter was discussed later in the proceedings when, during Petitioner's examination by his own counsel, the following exchange occurred (TR. 1357-1358):

Q. Now, the House Managers conducted a rather thorough investigation, did they not, into your conduct as a trial Judge and as a Circuit Judge in preparation for your trial in the Senate?

A. If they missed anything I don't know what it was. They took an aerial photograph of my house.

Q. Well now, Judge, was there anything in the charges that were filed in the Senate —

CHAIRMAN: I notice that counsel is not objecting, but it would appear to me that this line of inquiry has been vigorously objected to by counsel and has been sustained by the Commission, unless it goes to his mental condition at that time. It doesn't have a thing to do with that subject matter.

MR. MASTERSON: The reason I am offering the testimony is to show that, first of all, there was precedent for filing of this Petition.

CHAIRMAN: Yes, sir.

MR. MASTERSON: And at a time when he was being exhaustively researched for some impropriety that this matter must have come to the attention of people investigating him, and they did not find it improper.

JUDGE RAWLS: He was being investigated for an entirely different offense than which he is being charged here. And the members of this body know it, and we have gone back and forth over that. I am just speaking as one member of the Commission. I don't see any reason for any further inquiry."

And, of utmost significance in this regard, is the fact that the Commission expressly found that "there is not sufficient evidence in this record to support a

finding that Judge Kelly has a mental or emotional disability that seriously interferes with his conduct as a circuit judge". (See: "Report of the Judicial Qualifications Commission, page 7, R. 110).

Thus, this Court in its majority opinion expressly predicates its approval of the Commission's recommendations upon evidence wholly unrelated to any charge or allegation as to which the Commission found the evidence sufficient or which survived the Commission's scrutiny and findings. In other words, this Court has approved the legality of the Commission's particular findings which were adverse to Petitioner upon the basis of evidence which was concededly unrelated to those charges.

In sum, the factual assertions stated in the above-quoted portion of this Court's opinion are based upon evidence which it was agreed would not be used to support any charge of which Petitioner was convicted by the Commission. Clearly, the Commission was correct in refusing to consider specific acts of alleged misconduct in office occurring prior to Petitioner's re-election for any purpose other than mental competence. The Commission correctly acknowledged that it was not its function to second-guess the electorate.[1]

Furthermore, it is of utmost importance that the very limited evidentiary purpose of pre-election conduct be studiously recognized and honored here. As shown in the above-quoted colloquy from the transcript (TR. 1357-1358), Petitioner was not allowed to explore pre-election events to establish the propriety of filing the Petition in the Circuit Court.

We respectfully submit that the limitations established below regarding the purpose of this evidence were correct and should be binding here. Therefore, we

[1] "No rule is better settled under our democratic theory than this; when one is re-elected or re-appointed to an office or position he is not subject to removal for offenses previously committed." *Rosenfelder* v. *Huttoe*, 24 So.2d 108, 110 (Fla. 1946).

submit that this Court should not consult or utilize that evidence in any way in reviewing or approving the charges of which Petitioner was convicted by the Commission.

(b) Further, the above-quoted portion of this Court's opinion states that Petitioner "was rude and inconsiderate of attorneys and Court personnel." This was the gravamen of the formal charge contained in Paragraph VIII which read as follows:

> "Failing to be considerate of, and courteous to, counsel and others in attendance upon the court, contrary to Canons Nine and Ten of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida."

Again, the Commission found the evidence as to this charge "insufficient". (See: "Report of the Judicial Qualifications Commission, page 7; R. 110). Thus, we respectfully submit that this Court overlooked the fact that the Commission, which heard and observed the witnesses, rejected this charge.

In sum, we respectfully submit that this Court has, inadvertently and through oversight, based its approval of the Commission's recommendations upon (1) evidence which is not legally relevant to any issue here and upon (2) an erroneous impression that the Commission had found Petitioner guilty of the "rudeness" charge.

2. This Court stated in its majority opinion (Slip Opinion, page 4) as follows:

> "Apparently, for the purpose of seeking favorable publicity for himself, petitioner misrepresented the facts in this petition regarding his removal as presiding judge when he said:
>
> > "This Petitioner has resigned a position he coveted to remove any possibility of personality and vanity as a consideration in the discharging of this obligation."

We respectfully submit that in making this finding this Court may have overlooked the fact that this Court had before it no such finding by the Commission. The "Report of the Judicial Qualifications Commission" in this cause (R. 110) found the evidence insufficient to support the charges contained in Paragraphs IV, VI, VIII and IX of the formal charges. The charges contained in Paragraphs IV and IX were as follows:

IV

"Seeking to embarrass the other judges of the Sixth Judicial Circuit by filing a petition with the Clerk of the Circuit Court of Pinellas County, Florida, on April 8, 1968, without prior thereto affording the other judges of said circuit an opportunity to consider the contents of said petition, but by appraising members of the press of the contents of the petition prior to filing the same, which petition contained inaccurate factual information contrary to Canons Eight and Twenty-one of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

IX

"Misleading the other judges of the Sixth Judicial Circuit regarding your willingness to resign as presiding judge in order to preclude your removal as presiding judge of the Sixth Judicial Circuit."

Thus the Commission found the evidence insufficient to support the charges alleging that the Petition contained inaccurate statements and that Petitioner misled the other judges in regard to his resignation. Moreover, there is no allegation or charge of "misrepresentation" or "inaccuracy" in the charges concerning which the Commission found the evidence sufficient, i.e., Paragraphs I, II, III, V and VII.

Thus, we respectfully submit that this Court has, by reason of inadvertence and oversight, gone beyond

the scope of the Commission's findings and recommendations and inadvertently resurrected a charge as to which the Commission found the evidence wanting. In doing so, we respectfully submit, this Court has made a basic factual determination from a cold written transcript. On the contrary, the Commission, which heard and observed the witnesses, expressly rejected this finding.

3. The remaining findings of fact adverse to Petitioner relate almost entirely to the filing by Petitioner of his Petition in the office of the Clerk of the Circuit Court. We respectfully submit that, in filing the Petition, Petitioner was necessarily exercising his constitutionally protected right to freedom of speech. As demonstrated in our Brief filed herein and as found by Chief Justice Ervin, in the minority opinion of this Court, Petitioner "followed the tradition of free citizens" (Slip Opinion, page 18) by making public his views and suggestions relating to improved administration of the courts of the Sixth Circuit.

We respectfully submit that the majority opinion of this Court may have inadvertently omitted or overlooked consideration of the silencing effect the majority decision may have upon judges throughout the state. Further, the right of a citizen to publish constructive criticism of our judicial system is no less constitutionally protected because the citizen is a judge. Indeed, a free people cannot be effectively informed of the operation of the judiciary unless judges are free to make their views known to the people. In this light, we respectfully submit that the following statement by the United States Supreme Court is worthy of note:

> "Speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1965).

WHEREFORE, Petitioner respectfully requests that the Court grant a rehearing and, upon reconsidera-

tion, Petitioner requests that the report and recommendations of the Commission be rejected.

Respectfully submitted,
MASTERSON, LLOYD, SUNDBERG & ROGERS
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and
FOWLER, WHITE, GILLEN, HUMKEY & KINNEY, P.A.
Post Office Box 1438
Tampa, Florida 33601
Attorneys for Petitioner
By: Bernard J. Masterson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing has been furnished by mail to the Honorable William Hopkins, attorney form the Florida Judicial Qualifications Commission, Supreme Court Building, Tallahassee, Florida 32302 and that two copies thereof have been furnished by mail to the Florida Judicial Qualifications Commission, to the attention of the Honorable John S. Rawls, Supreme Court Building, Tallahassee, Florida 32302 this 30th day of June, 1970.

Attorney

FLORIDA CONSTITUTION

§ 17A. Discipline, retirement and removal of justices and certain judges

(1) Except as it provides for mandatory retirement, this section shall apply to every justice of the supreme court and judge of the district courts of appeal and circuit courts. It shall be the sole method of disciplining, automatically or involuntarily retiring or removing such justices or judges, provided that all such justices or judges shall be liable to impeachment for any misdemeanor in office. All justices and judges shall automatically retire at age seventy (70) except those who

hold any judicial office on July 1, 1957; provided, however, that such mandatory retirement shall not prohibit a justice or judge from serving the entire term to which he was appointed or elected if he attains his seventieth birthday after serving at least one-half of such term.

(2) There shall be a judicial qualifications commission composed of:

(a) Two (2) judges of the district courts of appeal appointed by the judges of those courts and two (2) circuit court judges appointed by the judges of those courts.

(b) Two (2) members of The Florida Bar, who shall have practiced law in this state for at least eight (8) years, appointed by the board of governors of The Florida Bar; and

(c) Three (3) citizens, each of whom shall have been a resident of this state for at least five (5) years, neither of whom shall be a justice or judge of any court, active or retired, nor a member of The Florida Bar, appointed by the governor. When a member appointed under paragraph (a) ceases to be a judge of the court from which he was appointed or a member appointed under paragraph (b) ceases to be a member of The Florida Bar, or a member appointed under paragraph (c) becomes a justice or judge of any court or a member of The Florida Bar, his membership on the commission shall terminate and a successor shall be appointed for the remainder of his term. No member of the commission appointed under paragraphs (b) or (c) shall be eligible to succeed himself. Except as provided herein, no member of the commission shall hold a public office and no member shall hold office in a political party. The compensation and terms of office of members of the commission shall be fixed by law, provided that not more than one third (1/3) of the terms of the members

shall terminate in any two (2) year period. No recommendation of the commission to the supreme court shall be valid unless concurred in by two thirds (2/3) of its members. The commission shall elect one (1) of its members to serve as chairman.

(3) Any justice or judge to whom this section applies may be disciplined by private reprimand or removed from office for willful or persistent failure to perform his duties or habitual intemperance or conduct unbecoming a member of the judiciary or he may be involuntarily retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature. After such investigation as it deems necessary, the judicial qualifications commission may conduct a hearing concerning the removal, discipline or retirement of a justice or judge or request the supreme court to appoint three (3) special referees, who shall be active or retired justices or judges of courts of record, to hear and take evidence in any such matter, and to report thereon to the commission. All hearings shall be held in the county in which the justice or judge involved resides. Testimony shall be under oath, administered by a member of the commission or a special referee, and subject to the penalties for perjury. If after hearing, or after considering the record and report of the referees, the commission finds good cause therefor, it shall recommend to the supreme court the removal, discipline or retirement of the justice or judge. The supreme court shall review the record of the proceedings on the law and facts and shall order removal, discipline or retirement, as it finds just and proper, or wholly reject the commission's recommendation. Upon an order for involuntary retirement for disability, the justice or judge shall thereby be retired at retirement pay to be fixed by law which as to a justice of the supreme court, judge of a district court of appeal or circuit judge shall not be less than two thirds (2/3) of his then compensation if he has served for ten (10) years or more as justice or judge of such court or courts. Upon an order for removal, the justice or judge shall thereby

be removed from office, and his salary shall cease from the date of such order. The supreme court shall make rules providing for the procedure before the commission and the referees and the extent to which communications shall be privileged or confidential, provided that upon the entry of an order of discipline, removal or retirement the record shall no longer remain confidential. A justice or judge shall be disqualified in any proceeding involving his own discipline, retirement or removal. The supreme court shall by rule provide for the disqualification of any member of the commission or referee and for the ad hoc appointment of a person to take the place of a disqualified person.

(4) In the event a judge is removed from office, his judicial service shall not provide immunity from disciplinary proceedings for professional misconduct performed during his term of office or prior thereto.
Added, general election Nov. 8, 1966, eff. Nov. 9, 1966.

RULES OF JUDICIAL QUALIFICATIONS COMMISSION

Rule 8. INVESTIGATION

(a) The Commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of willful or persistent failure to perform his duties or habitual intemperance or conduct unbecoming a member of the judiciary or that he has a disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature, shall make such investigation as it deems necessary to determine whether formal proceedings should be instituted and a hearing held. The Commission without receiving a verified statement may make such investigation on its own motion.

(b) The judge has no right to be present or to be heard during an investigation, but before the Commission determines that there is sufficient cause to warrant formal proceedings, the judge shall be notified of the investigation, the nature of the charge, and the

name of the person making the verified statement, if any, or that the investigation is on the Commission's own motion, and, shall be afforded reasonable opportunity to make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct or disability. The judge shall not have the right to present other testimony or evidence, and he shall not have the right of confrontation or cross-examination of the person making the verified statement or any person interviewed, called or interrogated by the Commission. Such notification shall be given by registered or certified mail addressed to the judge at his chambers and at his last known residence.

(c) If the investigation does not disclose sufficient cause to warrant further proceedings, the judge shall be so notified.

(d) If the investigation does disclose sufficient cause to warrant further proceedings, the Commission shall designate one or more counsel who shall be members of The Florida Bar and who shall prepare appropriate papers and pleadings, gather and present evidence before the Commission or referees with respect to the charges against the judge, and otherwise act as counsel in connection with the prosecution of the charges against the judge including the representation of the Commission before the Supreme Court in connection with any proceedings before said court.

Rule 9. NOTICE OF FORMAL PROCEEDINGS

(a) After the investigation has been completed, if the Commission concludes that formal proceedings should be instituted it shall direct the counsel designated by the Commission without delay to give written notice to the judge advising him of the institution of formal proceedings to inquire into the charges against him. Such proceedings shall be entitled:

"BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

Inquiry Concerning a Judge, No. _____."

(b) The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within 20 days after service of the notice upon him. No charge shall be sufficient if it merely recites the general language of a charge in Rule 8(a) but must specify the facts relied upon to support a particular charge.

(c) The notice shall be served by the personal delivery of a copy thereof to the judge, but if it appears to the chairman of the Commission upon affidavit that, after reasonable effort for a period of 10 days, personal delivery could not be made, service may be made upon the judge by registered or certified mail addressed to the judge at his chambers and at his last known residence.

Rule 11. SETTING FOR HEARING BEFORE COMMISSION OR REFEREES

Upon the filing of an answer or upon the expiration of the time for its filing, the Commission shall order a hearing to be held before it concerning the discipline, retirement or removal of the judge, or shall request the Supreme Court to appoint three special referees who shall be active or retired justices or judges of courts of record to hear and take evidence in such matter and to report thereon to the Commission. The Commission shall set a time and a place in the county in which the judge involved resides for a hearing before itself or before the referees, and shall give notice of such hearing by mail to the judge, the referees and to the counsel at least 20 days prior to the date set.

Rule 12. HEARING

(a) At the time and place set for hearing, the Commission, or the referees when the hearing is before referees, may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The failure of the judge to answer or to appear at the hearing, standing alone, shall not be taken as evidence of the truth of the facts alleged to constitute grounds for discipline, retirement or removal. In any proceeding for involuntary retirement for disability, the failure of the judge to testify in his own behalf or to submit to a medical examination requested by the Commission or the referees may be considered, unless it appears that such failure was due to circumstances beyond his control.

(c) The proceedings at the hearing shall be reported verbatim.

(d) When the hearing is before the Commission, not less than three members shall be present when the evidence is produced.

Rule 21. COMMISSION VOTE

If the Commission finds good cause, it shall recommend to the Supreme Court the discipline, retirement or removal of the judge. When the hearing was held before referees the affirmative vote of six members of the Commission is required for a recommendation of discipline, retirement or removal of a judge. When the hearing was held before the Commission without referees the affirmative vote of six members of the Commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of discipline, retirement or removal of a judge.

Rule 22. RECORD OF COMMISSION PROCEEDINGS

The Commission shall keep a record of all formal proceedings concerning a judge. The Commission's determination shall be entered in the record and notice thereof shall be mailed to the judge and to the counsel. In all formal proceedings resulting in a recommendation to the Supreme Court for discipline, retirement or removal, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings.

Rule 23. CERTIFICATION OF COMMISSION RECOMMENDATION TO SUPREME COURT

Upon making a determination recommending the discipline, retirement or removal of a judge, the Commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the Commission, together with the transcript and the findings and conclusions, with the Clerk of the Supreme Court and shall promptly mail to the judge and to the counsel notice of such filing, together with a copy of such recommendation, findings, and conclusions.

JUDGE KELLY'S RESIGNATION

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA

On Tuesday after the first Monday of January, 1961, the dockets of this circuit were cluttered with thousands of cases that were not being administered and were a source of concern to the people involved. Some of them had been pending for fifty years. There were fifty-two appeals that had been pending for more than twenty years. The jail house was crowded with defendants awaiting disposition by the circuit court. One judge tried all of the criminal cases in Pinellas County and did not permit his fellow judges to participate in this portion of the court's work. This reached a peak when the constitutional authority of the other judges to hear petitions for writs of habeas corpus was stripped from them by a general order. Local rules were passed

by the judges in conference that were in conflict with the law and the best interests of the public. The implementation of these rules was opposed and the Supreme Court rejected them. Since then, the dockets have been cleared of approximately eleven thousand cases. All of the judges in the circuit share in the work of the court including the trial of criminal cases consistent with their obligation and the spirit of the law. Appeals to the circuit court are reasonably current. The number of persons waiting in jail for the action of the circuit court was reduced by seventy per cent. Each of these matters involved basic public interests, the integrity of the court and its service to the public. Each accomplishment has caused controversy. Recent developments in the law as it regards criminal cases imposed heretofore unknown burdens upon the courts and has greatly increased the costs of their operation. The true nature of this course toward a judicial utopia is not yet appreciated. There has always been a need for efficiency and good administration in the operation of our trial courts, however, the present condition causes this need to become urgent. The Sixth Circuit is in dire want of reorganization and administrative change. Many of its operations are inefficient and wasteful. It is not sufficiently responsive to the public need. My presence as presiding judge of this circuit is being used as an excuse for avoiding the responsibility of the judges to address themselves to the problems of the circuit. Believing as I do that it is not so important who serves the public interests as that the public interest be served, the question must arise as to whether my continuing as presiding judge is based upon vanity or a desire to serve. The course to be taken does not in any way suggest a lack of interest, concern or dedication but simply it is based upon the hope that this gesture will result in a constructive reappraisal and a future direction which is in the interest of the people served by this court.

THEREFORE:

I RESIGN AS PRESIDING JUDGE OF THE SIXTH JUDICIAL CIRCUIT effective this the 26th day of March, A.D. 1968.

RICHARD KELLY
Circuit Judge

SECOND NOTIFICATION OF INVESTIGATION

Honorable Richard A. Kelly
Route 2, Box 225-A
Zephyrhills, Florida

Pursuant to the provisions of Section 17A, Article V, Constitution of the State of Florida, and the Rules of the Florida Judicial Qualifications Commission as adopted by the Supreme Court of Florida (207 So. 2d 443), you are hereby notified that the Florida Judicial Qualifications Commission, on its own motion, is conducting an investigation of your alleged conduct as a Circuit Judge of the Sixth Judicial Circuit of the State of Florida, which may have been unbecoming a member of the judiciary, in February, March and April, 1968 by:

(a) Failure to cooperate with other circuit judges of the Sixth Judicial Circuit, while Presiding Judge of said circuit, during the months of February, March and April, 1968, contrary to Canon 8 of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

(b) Attempting to seek alleged change in court procedures, in a manner contrary to Canons 8, 20, and 23 of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

(c) Seeking publicity with the intent to embarrass the other judges of the Sixth Judicial Circuit, by filing a petition with the Clerk of the Circuit Court of Pinellas County, Florida, on April 8, 1968, without prior there-

to affording the other judges of the said circuit an opportunity to consider the contents of the said petition, contrary to Canons 8 and 21 of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

(d) Using the office of Circuit Judge of the Sixth Judicial Circuit for the purpose of advancing your personal ambitions and publicity, to the detriment or embarrassment of your fellow circuit judges of the Sixth Judicial Circuit, contrary to Canons 8, 21, 23, and 34 of the Canons of Judicial Ethics, as adopted by the Supreme Court of Florida.

The Commission will meet at 2:30 o'clock P.M., on Monday, August 19, 1968, at the Pasco County Courthouse, Dade City, Florida. Pursuant to Rule 8(b) of the Rules of the Florida Judicial Qualifications Commission, you may at said time and place make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting, or admitting your conduct as above set out.

Very truly yours,

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
By
John S. Rawls, *Chairman*

EXHIBITS TO PETITION FILED BY JUDGE KELLY

PETITION FILED SEPTEMBER 7, 1962

PETITION

Comes now, RICHARD KELLY, as Circuit Judge of the Sixth Judicial Circuit and submits to his fellow Judges of this circuit for their approval a set of Proposed Rules for this circuit, a copy of which is attached to this Petition and made a part hereof.

The Rules are submitted to assist in a solution to the problems of administration of the circuit that have caused public controversy and to supplement existing rules in force.

The public controversy referred to was precipitated by the Order of the Presiding Judge dated December 13, 1961, as amended on the 28th day of December, 1961 (the Order and Amendment are attached hereto and made a part hereof) and press releases issued by the Presiding Judge in explanation of this Order.

Since December 13, 1961, two rules designed to accomplish the same purpose as the Presiding Judge's Order have been submitted to the Supreme Court for approval. The first was not approved and the second was disapproved and stricken by the Supreme Court.

The first rule was a verbatim adoption of the Presiding Judge's Order dated December 13, 1961 as amended and was approved by the Judges of this Circuit in conference by a vote of five to three. The second Rule submitted to the Supreme Court read as follows:

I. DIVISIONS OF THE COURT.

There shall be a Criminal Division and a Civil Division of the Court. Each such division shall have a chairman to be appointed by the presiding Judge, with power of self-appointment.

This Rule was passed by the Judges of this circuit in conference by a vote of seven to one.

This Petitioner was the only Judge of this circuit filing a dissent and who petitioned for disapproval with the Supreme Court as to both of the submitted Rules.

The Petitioner's dissent and opposition to this Order and these two Rules is based upon the fact that such a system for the distribution of the work of the circuit is impractical resulting in an unequal distribution of the work load, inefficiency and controversy. The Petitioner is supported in this contention by the practice in other circuits. In every other circuit in the State of Florida all cases of every category are divided among the Judges equally on a basis of comity and courtesy.

That this system of administration by self-appointment and subjective consideration has proven itself to be unworkable and a source of controversy in this circuit can be demonstrated by the following facts and statements:

(a) On April 17, 1962 this Petitioner ordered the Clerk of the Circuit Court of Pinellas County to furnish him with a list of appeals pending before the Circuit Court in that county. The list was not received until April 25, 1962 and was a list which had been in existence since September 1961. On the same day the Petitioner received the list, the Presiding Judge dismissed thirty-five appeals which had been pending for more than twenty years including one which had been pending since 1913 and four which had been pending since 1914, etc. Since the date this Petitioner took an active interest in criminal appeals pending before this Court one hundred thirty-two appeals, fifty-two of which had been pending for more than twenty years, have been dismissed. Prior to this time all criminal appeals were assigned to the Presiding Judge (this is the system which is unworkable.) If this is in the best interest of the Court there must be some explanation why these appeals could be disposed of after an active interest by the Petitioner on April 17, 1962 and were not disposed of for the fifty preceeding years. It may well be that additional investigation will divulge that more than one hundred thirty-two cases weare delayed in their diposition.

This Court is required by Section 932.52 (14) Florida Statutes 1961 to set all appeals "for a speedy hearing" and to dispose of all such appeals as "speedily as possible." This Court is further required by the same Section to sound the Municipal Appeals Docket at least twice in each year and "all undisposed of appeals shall have a speedy disposition." Until the last sounding of the docket in

Pinellas County in May of this year (after April 17, 1962) the Municipal Appellate Docket has not been sounded and this Petitioner is advised that this is true at least as far back as 1952. This is profoundly unfortunate.

When criminal appeals are filed in this Court and they are not "speedily" disposed of, this Court is then used as an instrument of injustice for the simple reason that a person convicted of driving while intoxicated, bolita or moonshine violations, or others on the municipal leval can thwart the progress of justice simply by appealing to this Court. In these instances the offices of the Court are being misused. This Petitioner is not suggesting that this misuse is intentional but is suggesting that each Judge must share his responsibility for efficient administration of the Court or must share the disgrace from not doing so.

(b) On July 9, 1962 this Petitioner ordered the Clerk of the Circuit Court of Pinellas County to give this Petitioner a report on the current status of pending cases, a copy of the report received is attached hereto and made a part of this Petition. The report eloquently describes the situation. Some of the cases pending date as far back as 1912.

(c) The work of the circuit is not only unequally divided as to the category but it is unequally divided as to the quantity. According to the information furnished by the Clerk of this Court the Judges in St. Petersburg are carrying the heaviest load by far. For every one case assigned to the two Judges in Clearwater, there are three cases assigned to the Judges in St. Petersburg. Considering the number of Judges in St. Petersburg, four, and the number of Judges in Clearwater, two, handling civil matters, the ratio should be two to one not the existing three to one. This creates a disparity of 50 per cent which is unfair to the litigants and the people of St. Petersburg even if the Judges there are willing to carry the heavier load.

(d) Recently, the Presiding Judge of the circuit certified to the Supreme Court that the case load in this circuit was such that it was necessary to assign a Judge from another circuit to help with the case load in the Sixth Circuit because the Judges were overburdened. So, while a Judge from another circuit handled work of the Sixth Circuit, this Petitioner, at the same time, had a total of six and one-half free work days on his calendar not counting Saturdays. The lack of liaison and organization is such that this Petitioner was not notified or consulted about the need for outside assistance and came to know about the situation when he read it in the newspaper. This lack of liaison and the resulting lack of cooperation is the result of the system of "self-appointment" and this situation is also contributed to by the fact that the rule in this circuit is not to have regular conferences except in January of the even years and then not again until July of the odd years.

(e) As you know the law requires that the Petitioner reside in Pasco County but as you also know the work of the circuit demands that the Petitioner devote a majority of his time to the work of Pinellas County. This being the situation, the Petitioner requested the Presiding Judge to assign criminal matters in Pinellas County to him on one of the following basis:

(1) One-eighth of the criminal cases (since there are eight Judges) or,

(2) Any reasonable assignment which the Presiding Judge cared to make. This Petitioner offered to carry his present assignment plus any criminal case assignment so as not to interfere with the present schedule of any other Judge. To this request the Presiding Judge announced that *he* handled *all* of the criminal cases in Pinellas County and had for years and was going to in the future in spite of what the Petitioner thought ought to be.

The Presiding Judge then advised this Petitioner that, "You will try criminal cases in Pinellas County over my dead body."

As each of you know this Petitioner has been the principal proponent in urging the establishment of a set of Local Rules to govern the practice in this circuit. There is not another circuit even closely approaching the population of this circuit that does not have a working set of Local Rules. As each of you know, I was the only Judge of this circuit who specifically requested an opportunity to serve on the Rules Committee, and as you know, this courtesy has been persistently denied me by a Presiding Judge who felt that there was no need for such Rules.

It would seem with further moderation that a system which would support one Judge taking such an attitude with another Judge of equal authority and jurisdiction is a system which is certainly going to breed controversy and ill will. Of necessity, a request made by any Circuit Judge should be considered and disposed of by the Judges on its merits. There can be no question that a controvery among the Judges exists but to the knowledge of this Petitioner there has been no dissention or anything that would mar a completely cordial relationship between all of the Judges except that which is directly attributable to this concept of "self-appointment."

Section Three of the Rules submitted will require amendment if the numerical distribution of cases between the Judges in St. Petersburg and Clearwater is to be equalized, or by using some basis other than the present geographic system for dividing the cases. It may well be that the better system would be to divide the cases among the Judges county wide and allow the Judge to travel between Clearwater and St. Petersburg as necessity requires. In either event, Section Three, as

it is stated, is only a suggested form not a solution if the unequal numerical distribution problem is to be resolved.

The Supreme Court's Order dated July 25, 1962 clearly indicates that the philosophy of the majority of the Judges in this circuit on the question of the relative position of the individual Judge is misguided. Of twelve rules that were submitted by the majority of the Judges and dissented to by this Petitioner, three rules were stricken entirely and three modified in such a way that they did not infringe upon the authority or dignity of any individual Judge.

Rule One, as submitted by the majority of the Judges and which has otherwise been discussed in this regard was stricken entirely.

Rule Seven, as submitted to the Supreme Court by the Judges of this circuit read as follows:

> VII. JURY TRIALS—BY WHOM TO BE TRIED.
>
> Each civil jury trial shall be conducted by the Judge to whom the case has originally been assigned, subject to re-assignment by the chairman of the Civil Division in order to equalize the trial load and expedite the conclusion of cases.

The Supreme Court amended Rule Seven to read as follows:

> VII. JURY TRIALS—BY WHOM TO BE TRIED.
>
> Each civil jury trial shall be conducted by the judge to whom the case has originally been assigned.

This is obviously as it should be. Comity requires that between Courts of concurrent jurisdiction the Court first taking cognizance of a matter preempts the field. With the result that once a Court of competent jurisdiction takes jurisdiction of a matter, then no other Judge or Court may infringe upon such jurisdiction. This is the

comity which the Supreme Court referred to when addressing the Judges of this circuit in the previous Order.

Rule Ten, which was submitted by the majority of the Judges of this circuit, read as follows:

> X. MINIMUM TIME FOR VACATING HOME IN DIVORCE AND SEPARATION CASES.
>
> A minimum of 24 hours shall be set in order to vacate in separate maintenance and divorce cases and the respondent shall be afforded an opportunity to apply to the court for relief from such order; and assignment of time for such hearing shall have priority.

This Rule attempted to restrict the discretion which is afforded to each individual Judge of this circuit. The Supreme Court struck this Rule in its entirety.

Rule Twelve, as submitted by the majority of the Judges of this circuit, read as follows:

> XII. BUDGET.
>
> Budget and purchases shall be handled by a resident Judge of Clearwater and a resident Judge of St. Petersburg.

This Rule attempted to take the authority from the individual Judges to handle the budget for their Court. Each individual Judge has this prerogative and it should not be taken away. The Supreme Court struck this Rule in its entirety.

Rule One, which was submitted by the Judges of this circuit has otherwise been discussed and will not be treated again in this regard other than to say the Supreme Court's striking Rule One is consistent with its treatment of Rules Seven, Ten and Twelve.

The purpose of referring to the treatment given submitted Rules by the Supreme Court is to demonstrate that any effort to concentrate power and authority in any individual Judge or committee of Judges under his control is inconsistent with the law and the nature of our judicial system. It is necessary that the authority afforded to each individual Judge be zealously guarded or else the individual Judge upon whom the entire system depends will be deprived of his judicial freedom and dignity which are indispensable. It is upon these considerations and the others considerations that have been referred to in this Petition that Petitioner urges the adoption of Rules that guarantee the authority and dignity of each individual Judge and defend against any arbitrary exercise of power that will interfere.

That it is necessary for the Judges of this circuit to pass a Rule which is consistent with custom and fair to each Judge of this circuit is most cogently demonstrated by the unfortunate necessity that caused the Supreme Court in its Order dated Monday, May 21, 1962 to remind the Judges of this circuit that,

> "Customarily throughout the state such assignments are made to divisions of Judges of multiple Judge circuits and they are made regularly on the basis of comity and courtesy in the interest of the orderly and efficient administration of justice."

The mere fact that we must be reminded to conduct our affairs on a basis of comity and courtesy should be more than enough to galvanize us into action toward such a system for this circuit.

It is with deep regret that this Petition is prepared and submitted. The situation leaves no alternative. This Petitioner's request for a conference of the Judges of this circuit has been denied. There must be either the arbitrary authority or an effort to create an atmosphere of fairness in which the Judges of this circuit can work in dignity.

It has been suggested that we further delay the consideration of the issues here raised. This Petitioner votes now unalterably for a system of fairness and comity which protects the dignity of each Judge of this circuit and votes against any system of "self-appointment".

There is no need for further controversy. If the Rules here submitted are undesirable, then each Judge should be able to give logical reasons for his objection and make counter recommendations consistent with custom and that which has been dictated by the Supreme Court of Florida to the Judges of this circuit directly and guided by the Rules on the same subject which have been approved by the Supreme Court in the past. (The Rules that are here submitted are either restatements or generally patterned after approved Rules that are in existence in other circuits in this state)

This Petitioner takes no pride in authorship and welcomes any amendment to the Rules here submitted and further offers his support to any Rules which his brother Judges will submit which are dedicated to a recognition of the dignity of each of the Judges in this circuit and effect an equal distribution of the work on a basis of fair consideration for each Judge.

Since the Supreme Court rejected your "Rule I", and amended your Rule VII, you can no longer logically denounce this Petitioner's position as being ill founded in spite of the seven to one vote. The Supreme Court's ruling clearly indicates the merits of Petitioner's position.

In this same vein, you do this Petitioner and yourselves an injustice if you attemt to categorize this question merely as an argument between the Presiding Judge of this circuit and this Petitioner. The personalities involved are not the issue. The issue is the equal

and fair distribution of this circuit and on a basis of courtesy and comity. If each of you resolve this issue objectively and adopt a Rule of the type suggested you need not be concerned about the relationship of this Petitioner and the Presiding Judge. The Presiding Judge and this Petitioner have consistently enjoyed a cordial relationship and will continue to do so if this matter is resolved in a businesslike manner without dilatory avoidance. This Petitioner believes sincerely that the Presiding Judge has done what he thinks is right as has this Petitioner but it is the issues, not the personalities, that demand attention.

Certainly, the pressure to resolve this conflict quickly, fairly and objectively should be unbearable. What a sorry spectacle is presented to the public when the dispensers of justice cannot resolve their own matters of administration with courtesy and objectivity.

DATED this 6th day of September, A.D. 1962.

Respectfully submitted,
RICHARD KELLY
Circuit Judge

ORDER

It appearing to me, as the Presiding Circuit Judge of the Sixth Judicial Circuit of the State of Florida, in order to have uniform, orderly, efficient and speedy administration of the criminal laws of the County of Pinellas; and said work being of a personalized character, and it having been recognized as a practice of this Circuit for many years that the criminal laws of Pinellas County should be administered by one judge insofar as possible in order to effectuate the desired uniform, orderly and efficient administration of the criminal laws,

IT IS THEREFORE ORDERED that all criminal actions or criminal matters involving the charging, arraignment, trial, sentencing or other disposition of criminal matters are hereby assigned to John U. Bird, Circuit Judge of said Circuit, and the Sheriff of Pinellas

County and the Clerk of the Circuit Court of Pinellas County, and their respective deputies, assistants and employees shall render such assistance as may be requisite for the administration of the criminal laws before the said judge, and are hereby prohibited from producing before any other Circuit Judge of Pinellas County for arraignment, trial, sentencing or other disposition, including but not restricted to writs of habeas corpus, any person or persons charged with any criminal offense within the jurisdiction of the Circuit Court, except upon the special order of the said Presiding Judge; and the State Attorney, his Assistants, associates and employees are hereby excused from presenting any person for arraignment, prosecution, trial, sentencing or other disposition, or from persenting any criminal matter pending in the Circuit Court of the Sixth Judicial Circuit of Pinellas County, except the judge designated as aforesaid.

DONE AND ORDERED this 13th day of December, A.D. 1961, at Clearwater, Pinellas County, Florida.

JOHN U. BIRD,
Presiding Judge,
Sixth Judicial Circuit.

RE: TRIAL OF FELONY CASES IN PINELLAS COUNTY

Upon consideration of my Order of December 13th, 1961, as Presiding Judge of the Sixth Judicial Circuit of Florida, recorded in Official Record Book 1314 at page 120, Instrument No. 897947 A, filed December 14th, 1961, relating to assignent of felony cases in Pinellas County;

IT IS NOW ORDERED that said Order be amended by deleting there from the phrase "Including but not restricted to Writs of Habeas Corpus" and substituting therefor the following:

"This Order and assignment shall not preclude any Circuit Judge from issuing any writ of habeas corpus. If any such writ is issued for release of any person charged, or attempted to be charged, or held for any felony, said writ, when possible, should, in the interest of the orderly administration of law and the dignity of the Court, be made returnable before the Judge assigned to the trial of the case."

Said Order of December 13th, 1961, in all other respects shall remain in full force and effect.

DONE AND ORDERED at Chambers, Clearwater, Pinellas County, Florida, this the 28th day of December A. D. 1961.

s/ John U. Bird
JOHN U. BIRD
Presiding Judge of the Sixth
Judicial Circuit

PROPOSED RULES OF PRACTICE FOR THE CIRCUIT COURT OF PINELLAS COUNTY SUBMITTED TO SUPREME COURT FOR APPROVAL JULY 5, 1962, HAVE BEEN CONSIDERED BY THE SUPREME COURT AND HAVE BEEN APPROVED IN PART AND AMENDED IN PART AS FOLLOWS:

I. DIVISIONS OF THE COURT.

Stricken.

II. EX PARTE HOURS.

Ex parte hours shall be from 1:30 p.m. to 2:00 p.m., of each day, at which time only non-controversial matters shall be considered.

III. HEARING ON EX PARTE MATTERS.

Any judge may hear ex parte matters involving free-dealership, removal of disability of non-age, and

change of name, regardless of the judge to whom assigned. Whether change of name proceeding shall require testimony and attendance of court reporter is discretionary with the judge presiding.

IV. GENERAL MASTERS.

There shall be three General Masters in Chancery to be appointed by a majority of the judges, two of whom shall serve in St. Petersburg and one in Clearwater.

V. DISCOVERY DEPOSITIONS AND PHYSICAL EXAMINATIONS.

All discovery matters, including written interrogatories and answers thereto, and physical examinations shall be concluded in advance of the pre-trial conference. Failure to comply with any one of these provisions shall cause the suit to be continued for the term, absent good cause.

VI. RULE NISI AND EXTRAORDINARY WRITS.

Any judge may issue a rule nisi or any extraordinary writ but the same shall be made returnable to the judge to whom the case is assigned. The issuing judge shall have prepared for distribution among counsel copies corresponding in number with the defendants or respondents.

When a case is submitted to a judge other than the one to whom assigned, the attorney so presenting the same shall verify by certificate as follows: "That the case, or the question presented, or the drafted form of order or decree requested, has not been previously submitted to any other judge."

VII. JURY TRIALS—BY WHOM TO BE TRIED.

Each civil jury trial shall be conducted by the judge to whom the case has originally been assigned.

VIII. COMPANION CASES.

An Attorney representing a party involved in a companion case shall forthwith advise the judge to which either of such cases is assigned. The said judge shall thereupon re-assign all such companion cases to the judge to whom has been assigned the case bearing the lowest docket number. The Clerk shall make appropriate notations on the file cover and the progress docket of such reassigned case or cases and thereafter all such companion cases shall be heard, tried and determined by the judge having the case bearing the lowest docket number.

IX. ATTORNEY NOT TO PREPARE PAPERS FOR OPPOSITE PARTY.

No attorney for either party shall prepare or assist in preparing on behalf of the opposite party any pleading to be filed in a proceeding for divorce, separate maintenance or annulment of marriage. A violation of this rule shall be ground for dismissal of the proceeding or other appropriate action by the court, sua sponte.

X. MINIMUM TIME FOR VACATING HOME IN DIVORCE AND SEPARATION CASES.

Stricken.

XI. PROCEEDINGS TO VACATE, ENFORCE, OR MODIFY JUDGEMENTS OR DECREES.

All applications, motions, and proceedings for the enforcement, modification, or vacation of any final judgment or final decree, heretofore or hereafter entered, shall be assigned to, heard and determined by the judge who signed the final decree or his successor in office.

XII. BUDGET.

Stricken.

Approved as amended
July 25, 1962.
(SEAL)
/s/ Guyte P. McCord
CLERK SUPREME COURT OF FLORIDA.

PINELLAS COUNTY

INTER-OFFICE COMMUNICATION

TO: Hon. Richard Kelly July 9, 1962
FROM: Mr. Alford Gordan

Pursuant to your request that you be advised of the approximate number of cases pending in the chancery and law sides of the Circuit, pleased be advised that in order to prepare a listing of all pending cases that it would entail a tremendous amount of work for this information to be listed and a long period of time. However, such a report was prepared in December of 1957 for the Florida Judicial Council and there were at that time approximately 4,500 cases then pending on the chancery and law sides of the Circuit Court. Undoubtedly this number has increased since that time and I would estimate that probably less than 10% of the ones then pending have been disposed of.
cc: Mr. Avery W. Gilkerson

PROPOSED RULES OF PRACTICE FOR THE CIRCUIT COURT OF PINELLAS COUNTY, FLORIDA

I. DIVISIONS OF THE COURT.

There shall be a Criminal Division and a Civil Division of the Court. Each such division shall have a chairman to be appointed by the presiding judge, with power of self-appointment.

II. EX PARTE HOURS.

Ex parte hours shall be from 1:30 p.m. to 2:00 p.m., of each day, at which time only non-controversial matters shall be considered.

III. HEARING ON EX PARTE MATTERS.

Any judge may hear ex parte matters involving free-dealership, removal of disability of non-age, and

change of name, regardless of the judge to whom assigned. Whether change of name proceeding shall require testimony and attendance of court reporter is discretionary with the judge presiding.

IV. GENERAL MASTERS.

There shall be three General Masters in Chancery to be appointed by a majority of the judges, two of whom shall serve in St. Petersburg and one in Clearwater.

V. DISCOVERY DEPOSITIONS AND PHYSICAL EXAMINATIONS.

All discovery matters, including written interrogatories and answers thereto, and physical examinations shall be concluded in advance of the pre-trial conference. Failure to comply with any one of these provisions shall cause the suit to be continued for the term, absent good cause.

VI. RULE NISI AND EXTRAORDINARY WRITS.

Any judge may issue rule nisi or any extraordinary writ but the same shall be made returnable to the judge to whom the case is assigned. The issuing judge shall certify a copy thereof upon which the executive officer shall make his return; and in addition thereto a copy or copies corresponding in number with the defendants or respondents. The certification shall be substantially in the following language: "I HEREBY CERTIFY that the within is a true copy of the original on file in the Clerk's office." Under no circumstance shall the original document be delivered to the executive officer.

When a case is submitted to a judge other than the one to whom assigned, the attorney so presenting the same shall verify by certificate as follows: "That the case, on the question presented, or the drafted form of order or decree requested, has not been previously submitted to any other judge."

VII. JURY TRIALS—BY WHOM TO BE TRIED.

Each civil jury trial shall be conducted by the judge to whom the case has originally been assigned, subject to reassignment by the chairman of the Civil Division in order to equalize the trial load and expedite the conclusion of cases.

VIII. COMPANION CASES.

When two or more cases are pending in this court which might appropriately be tried together, but which are assigned to different judges, the judge holding the lowest docket number shall try the cases and the other judge or judges shall assign accordingly. The clerk shall make appropriate notations, reflecting the judge before whom such cases shall be heard and determined.

IX. ATTORNEY NOT TO PREPARE PAPERS FOR OPPOSITE PARTY.

No attorney for either party shall prepare or assist in preparing on behalf of the opposite party any pleading to be filed in a proceeding for divorce, separate maintenance or annulment of marriage. A violation of this rule shall be ground for dismissal of the proceeding or other appropriate action by the court, sua sponte.

X. MINIMUM TIME FOR VACATING HOME IN DIVORCE AND SEPARATION CASES.

A minimum of 24 hours shall be set in orders to vacate in separate maintenance and divorce cases and the respondent shall be afforded an opportunity to apply to the court for relief from such order; and assignment of time for such hearing shall have priority.

XI. PROCEEDINGS TO VACATE, ENFORCE, OR MODIFY JUDGMENTS OR DECREES.

All applications, motions, and proceedings for the enforcement, modification, or vacation of any final judgment or final decree, heretofore or hereafter entered, shall be assigned to, heard and determined by the judge who signed the final decree or his successor in office.

XII. BUDGET.

Budget and purchases shall be handled by a resident judge of Clearwater and a resident judge of St. Petersburg.

Respectfully submitted,
JOHN U. BIRD
Presiding Judge
C. RICHARD LEAVENGOOD
T. FRANK HOBSON, JR.
C. M. KIRSINGER
CHARLES M. PHILLIPS, JR.
ORVIL L. DAYTON
THOMAS J. COLLINS

A TRUE COPY

Signed original
filed with Clerk or
Chief Justice
July 3, 1962

PRESIDING JUDGE
SIXTH JUDICIAL CIRCUIT

The undersigned Judge of the above entitled Court disapproves of the foregoing rules in their entirety, however, does approve of certain of the individual rules contained therein. A more formal disapproval will be filed.

RICHARD KELLY
Circuit Judge

PROPOSED RULES FOR THE INTERNAL GOVERNMENT OF THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA

In order to establish an orderly procedure and to establish an equitable division of the work of the Court based on comity and courtesy, and to expedite the business of the Court, the following Rules for the Internal Government of the Circuit Court for the Sixth Judicial Circuit of Florida are adopted and promulgated and shall become effective as of the date of the approval of the same by the Supreme Court of Florida.

SECTION I. DIVISIONS OF COURT

There shall be as many divisions of this Court as there are Judges authorized for said Circuit. Each of said Divisions shall be presided over by a single Judge assigned as follows:

Division A—Honorable John U. Bird
Division B—Honorable Orvil L. Dayton, Jr.
Division C—Honorable C. Richard Leavengood
Division D—Honorable Clyde M. Kissinger
Division E—Honorable T. Frank Hobson, Jr.
Division F—Honorable Thomas J. Collins
Division G—Honorable Richard Kelly
Division H—Honorable Charles M. Phillips, Jr.

If an additional Judge or Judges for this Circuit, in addition to the aforesaid eight, be appointed or elected, such additional Judge or Judges, in the order in which they are appointed or elected, shall be assigned to Divisions of this Court to be designated I, etc., and the successor of the above-named Judges and the successor of any additional Judge hereafter appointed or elected shall be automatically assigned to preside over the Division to which his predecessor was assigned.

SECTION II. CONFERENCE OF JUDGES

A conference of the Circuit Judges of this Circuit will be held at 9:00 A.M., on the first Friday of every month hereafter, or at such time as agreed upon by the Judges then present in the Circuit, or at any other time upon call of the Presiding Judge. Conferences will be held alternately in Chambers at St. Petersburg and Clearwater.

SECTION III. DIVISION OF CASES

The work of the Circuit Court of this Circuit shall be divided in such a way as to establish an equitable distribution of the case load among the Judges.

For the purposes of allocating civil matters within the jurisdiction of this Court in Pinellas County for determination in St. Petersburg and Clearwater respectively, Pinellas County will be divided into a northern and southern section by extending the southern municipal boundary of Largo, Florida, east and west across the county.

All civil matters within the jurisdiction of this Court which are to be heard in St. Petersburg shall be apportioned among Divisions A, B, G, and H, as follows:

Division C—25%	Division E—25%
Division D—25%	Division F—25%

All civil matters within the jurisdiction of this Court which are to be heard in Clearwater shall be apportioned among Divisions A, B, G, and H, as follows:

Division A—12%	Division G—25%
Division B—13%	Division H—50%

Assignments apportioned in this manner will be made by the Clerk of the Court according to an automatic schedule.

Said automatic schedules of assignment heretofore referred to shall be from time to time prepared and filed by the Court with the Clerk of the Circuit Court of Pinellas County. Said Clerk shall assign each case when filed to one of the Divisoins of this Court in accordance with said automatic schedules of assignment, and shall designate on the file cover, the complaint, and on the progress docket the Division to which such case is assigned and, thereafter, each case so assigned to a Division shall be heard, tried and determined by the Judge presiding over such Division and by no other Judge. The automatic schedules furnished the Clerk of the Circuit Court and their contents shall be kept secret and under no circumstances divulged.

SECTION IV. RE-ASSIGNMENT WHEN JUDGE DISQUALIFIED

When a Judge of any Division to which a case has been assigned is for any reason disqualified in said cause, then upon the entry of this order of disqualification the said cause shall be re-assigned by the Clerk to the next lower alphabetical Division of this Court if there is one, otherwise, to Division A.

SECTION V. TRANSFER OF CASES

All matters within the jurisdiction of this Court may be transferred from one Division to another provided the presiding Judge of the receiving Division and the presiding Judge of the transferring Division agree to such transferance.

SECTION VI. APPEAL CASES

The Clerk shall assign all appeals from lower courts, except de novo appeals, to the Divisions of this Court,

apportioning such assignments on the same basis as civil matters and using the appropriate automatic schedule of assignment; and thereafter, such cases so assigned pursuant to this Section shall be submitted to, argued before the determined by the Judge presiding over the Division to which such appeals are assigned.

SECTION VII. COMPANION CASES

An Attorney representing a party involved in a companion case shall forthwith advise the Judge of the Division to which either of such cases is assigned. The said Judge shall thereupon re-assign all such companion cases to the Division to which has been assigned the case bearing the lowest docket number. The Clerk shall make appropriate notations on the file cover and the progress docket of such re-assigned case or cases and thereafter all such companion cases shall be heard, tried and determined by the Judge of that Division.

SECTION VIII. PRESIDING JUDGE TO ASSIGN CRIMINAL TRIAL WORK, INCLUDING DE NOVO APPEALS.

The Presiding Judge of this Circuit shall allocate the criminal work in Pinellas County within the jurisdiction of this Court, including de novo appeals among Divisions A, B, G, and H, by making assignment of criminal trial work, including de novo appeal, to each Division so that each will carry as nearly as possible an equal share of the criminal trials.

The arraignments of all defendants in cases pending in Pinellas County will be assigned to Division A, B, G, and H, in rotation, and the Presiding Judge of this Circuit shall notify the judges and the Clerk of the schedule of rotation one year in advance. Such schedule of arraignments is to be kept secret and under no circumstances divulged.

All sentences will be imposed by the Presiding Judge of the Division before which the defendant was tried or before which the plea of guilty was received.

SECTION IX. PRIORITY OF HEARING

In the event an attorney has been set down for hearing before more than one Division for the same time, the case in which the notice of hearing was first given shall take priority over all other notices and hearings; provided, however, that jury trials shall be given priority, with criminal trials given first priority.

SECTION X. REMOVAL OF COURT FILE

(a) The respective Clerks of this Court will not permit the removal of the original court file from his office until the expiration of five full days after the date of filing complaint except upon order of the Court, unless a showing is made to the Clerk that it is necessary to present the file to a Judge upon emergency application for extraordinary relief.

(b) No court file shall be removed from the Clerk's office by any person, other than the attorneys of record, master or special examiner in the case, or guardian ad litem, without written leave of the Court, and no court file shall be taken outside of this circuit without written leave of the Court.

(c) Everyone removing files from the Clerk's office shall leave with the Clerk his receipt therefor.

(d) All court files shall be returned to the Clerk's office within ten days from the withdrawal of same, unless further time be granted in writing. Judges and Masters may retain files until their duties as such are completed and no longer needed.

(e) Failure to return files will be grounds for the denial of withdrawal privileges. The cost of re-establishing lost files will be assessed against the party whose receipt the Clerk keeps for such files.

SECTION XI. DETERMINE DIVISION BEFORE GIVING NOTICE

To avoid confusion, loss of time and delay, it is incumbent upon the attorneys to determine the Division to which a case has been assigned prior to reserving time and noticing the same for hearing.

COMPARISON CHART
CIRCUIT COURT CASES DISPOSED OF:

	Pasco	Pinellas	Hillsborough
1963	1828	6559	8330
1964	561	6799	9463
1965	783	5422	9734
1966	695	6080	7880

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

TRANSCRIPT OF CHARGE TO GRAND JURY

A Grand Jury of eighteen men and women having been duly impaneled and sworn in open Court in Clearwater, Pinellas County, Florida, the 30th day of August, A.D., 1965, the Honorable B. J. Driver, Judge of said Court, charged the Grand Jury as follows, to-wit:

APPEARANCES:

MR. CLAIR A. DAVIS,
State Attorney
Sixth Judicial Circuit of Florida;
MESSRS. ALLEN P. ALLWEISS,
and MR. RICHARD J. MENSH,
Assistant State Attorneys
Sixth Judicial Circuit of Florida.

THE COURT: Mrs. Spoth, Mrs. Milcinsky and gentlemen, you eighteen people constitute the Grand

Jury for this Court, Circuit Court of Pinellas County, Florida, for this term, the spring term. Your duties begin today and they will end on the sixth day of December, 1965. That doesn't mean that you are going to be required to work from now until then. There are matters requiring attention of the Grand Jury today. I am advised that you will probably function today and tomorrow, maybe a little bit on the following day, Wednesday. You will then be recessed subject to being recalled at a later date should you be required. You will be given ample opportunity to prepare yourselves to come back; in other words, give you sufficient notice that you will not be called on without an opportunity to prepare your affairs. You will be allowed to go home at night; you will set your own hours that you wish to labor.

It is the duty of the Court to instruct you before you begin your labors. It is essential that you have an understanding of the enormous power of the Grand Jury and of the great responsibility which it has.

The duties of the Grand Jury are those of an independent investigative body. The Grand Jury does not try cases. It inquires into complaints and charges of crime. You are responsible to no person nor to no body except this Court as required by law.

The Grand Jury is the most powerful body known to Government. It is also, of course, one of the most responsible. There is no greater power for good and deterrent to evil than the Grand Jury. Those who are inclined to commit crimes are deterred because of the fact that they may have the eye of the Grand Jury placed upon them. It is also a protection to the citizenry of the State knowing that they have the Grand Jury looking after their interests. No body and no group exercises a more important duty, a more indispensable function of Government than does the Grand Jury.

The Grand Jury is an ancient institution. It has a known history of over seven hundred years. History has proved its worth beyond every doubt.

The oath which you have had administered to you today can be traced back to 997 when about the same oath was administered by a Dane known as Ethelbert The Unready when he charged the equivalent of a Grand Jury in Denmark: That is, to shield no man who has committed a crime, nor to allow to go free any guilty man.

I charge you that the Grand Jury has two spheres of operation: Those pertaining to violation of the criminal law and the right to investigate those matters which are considered and termed to be of a civil nature.

First, with reference to the criminal phase of your activities, it is the duty of the Grand Jury to investigate charges of crime which have been brought to its attention. It is not the duty of the Grand Jury, however, to try these cases. That is the duty of the petit jury. Yours is simply to inquire and determine if crimes have been committed and if they are brought to your attention. It is your duty and your sole duty to ascertain if probable cause exists that a crime has been committed and if the person accused probably committed that crime. And, if the evidence is sufficient to constitute proper cause that the crime has been committed by the accused person, then it is the duty of the Grand Jury to find what is known as a true bill, which, when it is properly returned in this Court, then becomes an indictment upon which the accused may be tried.

Probable cause, which must be shown to your satisfaction before you should vote to return a true bill, has been defined as a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that a particular person is guilty of a particular crime. I charge you that mere suspicion as such would not constitute probable cause.

I remind you that, as an aid and assistance to you, the State Attorney is required by law to be the legal counsel to the Grand Jury. He will submit to you those matters which have been called to his attention and which he thinks worthy of the consideration of the Grand Jury. You may rely upon the State Attorney as your legal advisor.

In weighing and considering the issue of probable cause, however, I would remind you that you will hear only one side of it, one side of the cause. You will not hear the defendant's side of it. For that reason, you should scrutinize carefully those matters brought before you to make sure that you are not bringing back indictments, true bills, based upon mere suspicion, surmise, or speculation. It is of no force and effect, can serve no good purpose, to return true bills based upon evidence which is insufficient to sustain the proof necessary to justify a conviction of the accused. However, when you are satisfied that probable cause exists, it is your sworn duty to cause the accused person to be indicted. Likewise, when indictment is not justified, it is your sworn duty to absolve or clear the accused person by returning a no true bill.

You have the authority to investigate any crime. I suggest and advise, though I do not instruct you, that you should first concern yourselves primarily with the investigation of those matters that are known as capital cases. Under the Constitution the only manner in which a person accused of a crime which carries with it the death penalty; that is, a capital case, is upon Grand Jury indictment. These are the ones you should concern yourselves with primarily, and such other matters as you deem appropriate to your consideration under the law as I am giving it to you and as it may be brought to your attention by the State Attorney.

Now, with reference to the several matters that may be inquired into by you, the Grand Jury is not limited to investigation of criminal cases. It may and has the plenary power to investigate several matters,

to invetigate officials of the County, whether the investigation involves charges of criminal activities, misfeasance in office, nonfeasance or malfeasance. It is your right and your duty, and you have the power, to inquire whether any official of the County or the State is acting in a competent manner or is being lax in the performance of his or her duties as are imposed upon them by the law. In general, you may not only investigate every offense which affects the morals, health, sanitation and general welfare of the County, but may and should inquire into matters of Governmental administration, including County institutions, buildings, offices and officers, and make it your permanent concern, their psysical, sanitary and general condition if you deem such an investigation to be required by your oath and under your duty as the Grand Jury of this County.

Let me caution you, however, that a Grand Jury investigation must not be made a tool of any designing group or block in order to embarrass or suppress or harass any individual, or to pry into any individual or groups personal affairs. Promiscuous indictments or presentments or reports, grounded on street rumors or common gossip will not be permitted by the Grand Jury. You should not indulge in any such.

A Grand Jury ought not to single out persons in civil or official positions for the purpose of censure or to impugn their motives by words or otherwise, or by innuendos, thereby holding them up to criticism or scorn unless there is a strong foundation for that criticism. It is improper and unlawful to present with words or censure or reprobation a public official or any other person by name without presenting him or her for indictment. In other words, you are not to utilize the strong powers vested in you except in those areas which the law allows. You may, however, give a fair, unbiased report of your findings as they pertain to negligence or incompetence on the part of any public official or officials who are responsible for any undesired condition you might find in any County institution.

Now, as to the procedure to be followed by the Grand Jury in its investigation, it will be the duty of the Court, and I shall perform this duty at the conclusion of these charges, to appoint one of your number as your foreman. He will be the Grand Jury foreman for the entire term of Court. Also, you will have a vice foreman. The duties of the foreman are to preside over the sessions of the Grand Jury, to administer oaths to the witnesses, and to keep a list of all witnesses. The vice foreman shall perform these functions in the absence or disability of the foreman himself. The clerk, who will be nominated by your number and appointed by the Court, shall keep the minutes of your proceedings in a book provided for that purpose. The State Attorney will advise you as to the mechanics and details of performing these functions. It is the duty of the foreman, and he will return to this Court a list under his hand of all the witnesses who have been sworn and testified before the Grand Jury. And the clerk, when the Grand Jury directs, shall deliver the minutes of your sessions to the State Attorney or his authorized assistant. As I told you, the State Attorney either in person or acting through his assistants, is the legal advisor of the Grand Jury on any matters that might come before it. Now, it is to your best interest as a Grand Jury to accept and consider in good faith the advice and counsel of your legal advisor, and to give careful consideration to what he instructs you as to your duties and as to your rights and as to the law as it may apply to those matters that come before you.

It is the duty of the Court; that is, myself or one of my colleagues, Judge Anderson, whoever might be on the bench at the time, to be available to help the Grand Jury if you should require it. If at any time you should require further instructions from the Court, then we will be available to give you those instructions. We are not allowed, however, to advise you what you must do or what you ought to do. That is your duty and at your sole discretion.

Every Grand Jury under the Constitution consists of not less than fifteen members nor more than eighteen members. At least fifteen members of the Jury must be present at all times, and the affirmative vote of not less than twelve of those present is necessary for the finding of any indictment, presentment or report. The Grand Jury can take no action whatever unless you have at least fifteen of your members present.

It is within the province of the Jury to recess from day to day and week to week and to meet the conditions which you may encounter in the performance of your duty. I remind you, however, that the terms of this Court are limited and the time within which the Grand Jury may work is limited. It is, therefore, important that you carry on and finish your labors as expeditiously as possible and in as short a time as it is compatible with those duties which you are called upon to perform.

Under the law, if the Grand Jury deems it necessary, they may have available to them the services of a Court Reporter. This is not necessary, and I strongly urge you to follow the advice and counsel of your legal advisor in determining whether or not you wish a Court Reporter present.

If necessary, you may have the services of a qualified interpreter of a foreign language, should you deem it necessary.

A Bailiff will be made available to you by the sheriff. He will be outside your jury room at all times and is to assist you in any fashion that you deem necessary.

Now, in the course of your investigation, should it occur that any member of the panel is related by blood or marriage to any person being investigated by the Grand Jury, that Grand Juror may excuse himself or he may be excused by the Court; that is, the Judge,

upon it being brought to our attention; or the jury itself, by a majority vote of its members, may excuse that particular Grand Juror from participating in the deliberations. In any event, should this occur, you should let the Court know about it immediately.

Now, I want to instruct you concerning the secrecy surrounding your deliberations and the independence of the Grand Jury. These two qualities, secrecy and independence, are indispensable to a successful and effective function of the Grand Jury. The Grand Jury could not operate without these two qualities. The independence of the Grand Jury has already been referred to previously by myself. It is responsible to no one, absolutely no one except this Court.

Now, the secrecy which I mentioned guarantees to the Grand Jury freedom from restraint and guarantees impartiality in its decision. No one—and let me emphasize that—absolutely no one can tell the Grand Jury what to do or what not to do so long as the Grand Jury acts within the law. Not even myself or one of my colleagues as the Judge of this Court can impugn your activities nor limit them in any way so long as you are acting within the law.

The Grand Jury may conduct investigations upon its own initiative or upon suggestion of the State Attorney. The law gives to the Grand Jury complete immunity for its official acts and to each member of it is granted immunity for those acts committed in the discharge of the duties cast upon the Grand Jury, unless, of course, a Grand Juror personally, that is, the individual Grand Juror, should conduct himself illegally or improperly and outside the scope of his duties as cast upon him by the law.

Now, while the Grand Jury is hearing testimony or otherwise receiving evidence of any nature, no person except the State Attorney or his assistant or the Court Reporter, if you should have him, and the Grand Jury itself and the person being questioned shall be in the Grand Jury room. Let me reiterate that. The only persons permitted in the room while you are conducting your investigations are the members of your own body, the State Attorney, the Court Reporter, if you have one, and the person being questioned. All others must remain outside of the room and outside the hearing of the Grand Jury.

Now, while you are deliberating; that is, when you find the time appropriate to make up your presentment, return your indictments, no person, absolutely no person, including the State Attorney or the Court Reporter, will be present. The only persons in the jury room at that time will be the jury itself, all others being excluded.

Secrecy and fidelity are required of every individual member of the Grand Jury, and I remind each of you that severe penalties may be imposed on any Grand Juror who violates his oath or these instructions. The law forbids outsiders from taking any part whatever in the deliberations of the Grand Jury; from trying to or exerting any unlawful or corrupt interference or from attempting to or actually interfering with the duties of the Grand Jury, or attempting to exert any influence upon the Jury or any member thereof; that is, to try to sway or persuade them to act in a given way contrary to their duties. If any person should seek out and try to talk to the Grand Jury about any matters which should come before it or that you feel is trying to influence you in any fashion, it is your duty, and I instruct you, to call that to my attention immediately so that I might deal with it appropriately.

I charge you that the Grand Jury functions as a whole. No member of the Grand Jury has any authority to act individually. You can only act as a body. And the fact that you are a member of the Grand Jury does not imbue you with any authority. You must act as a body, as an institution, and not as individual members. However, any member of the jury may receive complaints and should bring to the members of the body as a whole any complaint which it has or which has been brought to your attention so that the Grand Jury as a whole may conduct an investigation as to these complaints. Or you may present these matters to the attention of the State Attorney, who will then present them in the proper fashion to the body as a whole.

The law requires that if any member of the Grand Jury knows or has reason to believe that an indictable offense, triable in the County, has been committed, he shall declare such fact to his fellow jurors who shall investigate it.

Briefly I instruct you that the law says, and I am required mandatorily to instruct you, that the Grand Jury may investigate and ought to investigate any alleged offense or violation involving the child labor laws of this State. The Grand Jury also may investigate any complaint concerning the election laws and the administration of the County.

In conclusion, ladies and gentlemen, I want to call to your attention the oath that each of you has taken as a member of this panel. The oath is prescribed by law and contains in very simple terms the sworn obligation by which you are now bound and which you must obey in every respect. This oath contains no surplusage, no superfluous words. It means exactly what it says. It is worth repeating, and I repeat it to you. It is that you, as Grand Jurors for the body of Pinellas County, do solemnly swear that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the counsel of the State of Florida, your fellows and your own, you shall keep secret, unless required to disclose the same by some com-

petent Court. That portion of the oath referring to secrecy is most important and cannot be over-emphasized. I remind you and reiterate that you shall not under any circumstances discuss these matters, these things, matters, coming before the Grand Jury, unless authorized and ordered by some competent Court. Your vote shall never be known outside the jury room. The opinions expressed by you on any matters while in the jury room shall never be known outside that jury room, and the testimony given you by the witnesses within the confines of the Grand Jury room shall not be known, as I said, unless they are released by some order of some competent Court. This oath is binding upon you at all times while you are a member of this panel and will follow you after you are discharged as a Grand Juror. It is an oath that you cannot secure relief from.

The oath follows, in addition to what I have said, in these words: "You shall present no man for envy, hatred, or malice, neither shall you leave any man unpresented for love, fear, favor, affection, reward, or hope thereof, but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God."

Like the Grand Jury itself, this oath is of ancient vintage and the instruction is the same as that administered to the Grand Jurors under the ancient common law of England and as administered to the Grand Jury, investigative body, of Denmark and Scandinavia. It is as nearly a perfect expression of fidelity and duty as can be promulgated by man. It contains the rules and high standards of fair and impartial duty and justice which ought to govern you in your service as a Grand Juror of this County and of the State of Florida. It is as appropriate today as it was when it was first pronounced seven hundred years ago.

Now, ladies and gentlemen, what I have given you, constitutes the general charges which are given to every Grand Jury as to its duty and as to the manner of conducting its work. These instructions are the instructions of the Court and you are to follow them.

The Court appoints Herman Hillard Dormany as foreman of this Grand Jury, and appoints Norman Frank Robbins as vice foreman. Ladies and gentlemen, when you retire to the jury room to begin your deliberations, you will select one of your number as clerk. You will nominate him and you will advise this Court of the name of that clerk, and his or her name will be spread upon the minutes as the clerk of this Grand Jury.

Mr. Clerk, here are the names. Mr. Bailiff, you will now escort the Grand Jury into its room to begin its deliberations. Ladies and gentlemen, when you have finished your labors and are prepared to make your presentment, the Court will be available to receive this.

The Court will now recess for five minutes, at which time it will reconvene for the trial of State versus Katz, Judge Anderson presiding.

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, James M. Swain, do certify that a Grand Jury, having been impaneled and sworn on the 30th day of August, A.D., 1965, in Clearwater, Pinellas County, Florida, was charged by the Honorable B. J. Driver; that I was authorized to and did report in shorthand the charge of said Court to the Grand Jury; and that the foregoing pages, numbered 1 to 17, inclusive, constitute a true and correct transcription of my said shorthand report.

Witness My Hand this 7th day of September, A.D., 1965, in St. Petersburg, Pinellas County, Florida.

James M. Swain
Official Court Reporter

EXHIBIT D
ACTUAL TRIAL SCHEDULE (1965 - 1967)

		Judges Used	Cases Set	Days Available	Days Used	Judges Required
Oct.	2	5	46	25	14	3
	9	6	38	30	11	3
	16	3	35	15	3	1
	23	3	18	15	1	1
	30	2	15	10	3	1
		19				9
Nov.	6	4	25	20	8	2
	13	5	50	25	12	3
	20	4	29	20	3	1
	27	3	17	15	3	1
		16				7
Dec.	4	4	29	20	9	2
	11	6	44	30	12	3
	18	2	12	10	3	1
	26	1	1	5	1	1
		13				7
Jan.	2	1	8	5	3	1
	8	4	35	20	16	(3)
	15	5	31	25	14	3
	22	3	24	15	6	2
		13				9
Feb.	5	4	32	20	15	3
	12	5	49	25	12	1
	19	2	9	10	3	1
	26	2	13	10	3	1
		13				8

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true copies of the foregoing Appendix "B" have been furnished by United States mail, postage prepaid, to the Honorable William Hopkins, attorney for Respondent Florida Judicial Qualifications Commission, Supreme Court Building, Tallahassee, Florida 32302 and to the Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32302 this _____ day of December, 1970.

JOHN W. BOULT,
ESQUIRE of
FOWLER, WHITE, GILLEN,
HUMKEY & KENNEY, P.A.
Post Office Box 1438
Tampa, Florida 33601
Counsel for Petitioner